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THE CHICAGO CHARTER CONVENTION

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The Illinois Constitution of 1870 prohibited the State legislature from enacting local or special laws incorporating cities, towns, or villages, or changing or amending the charter of any town, city, or village. In 1872 an act was passed, providing for the government of all cities in the State of Illinois. In 1875 Chicago abandoned its special charter, and accepted the provisions of the general law of 1872. This law, with a series of amendments, has continued for a generation as the fundamental law of the city of Chicago. The very rapid growth of the city, however, in territory, in population, and in the complexity of its municipal interests has rendered the law of 1872 wholly inadequate for the present needs of the great metropolis. Widespread agitation in regard to this subject led to the initiation, in 1903, of a constitutional amendment authorizing the State legislature to enact special laws regarding the government of Chicago, providing that such laws should not go into effect until approved by the voters of Chicago. This amendment was adopted by the people of Illinois in November, 1904, after a vigorous campaign had been carried on in its favor by the citizens of Chicago. The legislature of 1905 met very shortly after the adoption of this act, so that a complete charter could not be presented to them. A bill providing for a new system of municipal

[1] Professor Merriam was a member of the committee of five on the outline and draft of the charter, and chairman of the committee on municipal taxation and revenue.

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courts, and abolishing the old "justice shops," was prepared, however, by a citizens' committee; was presented to the legislature, and passed. A committee of the city council also drew up a proposed charter for the city, which was introduced into the State legislature, but of which only a small fragment was finally enacted. The term of the mayor was extended from two years to four; provisions were made enabling the city to secure the interest on its public deposits; and some other minor powers were contained in this rump charter. These acts were voted upon in November, 1905, and approved by the people. So far, however, as comprehensive legislation was concerned, very little had been accomplished, except the establishment of the new courts.

Meanwhile, the city council had passed an ordinance providing for a charter convention to draw up and present to the legislature a bill for a complete scheme of government for the city. Under the terms of this ordinance, the charter convention was to consist of seventy-four members. Fifteen members were to be appointed by the mayor of the city, fifteen by the governor of the State, fifteen by the State legislature, fifteen by the city council, and two each by the board of education, the public library board, the South Park board, the West Park board, the Lincoln Park board, the Sanitary District, and the Cook County board of commissioners. These members were duly selected by the several authorities interested and the convention met and organized in October, 1905. In view of the fact that the constitutionality of the charter amendment was in litigation, no important action was taken, however, until February, when a decision sustaining the amendment was handed down by the supreme court of the State. The work of the convention was then divided among fourteen committees composed of thirteen members each, with the exception of the committee on rules, procedure, and general plan which had twenty-three members. These committees were as follows: Municipal elections; municipal executive and departmental organization; municipal legislature; municipal courts; municipal taxation and revenue; municipal expenditures and accounting; relations of the municipality to other organizations and public authorities; public education; public utilities; penal, charitable and reformatory institutions; municipal parks and public grounds; rivers and harbors; rules, procedure, and general plan. These committees, with the exception of the law committee,

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which acted in an advisory capacity, met and considered the special subjects referred to them. Some of these committees were frequently in session and thoroughly discussed their particular fields of municipal government. Others did little or nothing. All of their results were transmitted, however, to the committee on rules, procedure, and general plan (October, 1906). A sub-committee of five was then appointed to consider all of the reports submitted to it, and to draw up for the convention an outline of a charter. A skeleton charter was drawn up in this way and presented to the entire convention. This outline covered all important proposals made in regard to the content of the charter in alternative form. Elections, for example, was covered in the following form:

1. The elective city officers shall be nominated only by a petition of qualified voters.

First alternative to 1: Elective city officers shall be nominated under a system of direct primaries.

Second alternative to 1: Elective city officers shall be nominated as now prescribed by law.

2. The names of all the nominees for each office shall be printed on the ballot under the title of the office for which they are candidates.

3. The charter shall contain no provision for conferring the right of suffrage on women.

4. (*a*) The election of all city officers, including those for the municipal court, shall be held in the spring.

Alternative to *a*: The election of all city officers, except those for the municipal court, shall be held in the spring.

(*b*) Spring elections for city officers shall be held on the first Tuesday after the first Monday in May.

5. Candidates and political committees shall be required to make sworn statements of receipts and expenditures of any campaign for nomination or election.

This outline was freely debated and an agreement reached on the main features of the scheme, early in January.

Having determined, in this way, the framework of the charter, a complete draft was made under the direction of the sub-committee on rules. Professor Freund, of the University of Chicago, was secured as the official draftsman, and, following the general lines agreed upon

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by the convention, a careful draft was worked out. This was discussed at length in committee, and then presented to the charter convention for final debate and decision.

Early in the work of the convention, a charter digest had been prepared under the direction of Mr. A. R. Hatton, covering in a comparative way the principal points in the charters of American and European cities. A copy of this was placed in the hands of every member of the convention, and the material served a useful purpose during the debates. It should also be said that the convention had secured headquarters of its own with a permanent secretary and office force. A considerable collection of charters and other material of interest was placed at the headquarters, and every effort was made to secure all information that might assist the members of the convention in deciding the many difficult points which came before them. Stenographic reports of all committee meetings were made, while the debates of the convention were reported and printed from day to day.

The main features of the charter as prepared by the convention covered the subjects of consolidation, home rule, and revenue. In order to make clear the consolidation features of the charter, it should be stated that the government of Chicago consists of the city corporate, a board of education, a public library board, five park boards, the Sanitary District, and Cook County. Each of these bodies has taxing and governing power of its own. The members of the board of education and the public library board are appointed by the mayor; the West and Lincoln Park boards by the governor; the South Park board by the judges of the circuit court of Cook County; while the Sanitary District and Cook County boards are elective. Although Cook County and the Sanitary District lie almost entirely within the limits of Chicago, yet under the terms of the constitutional amendment they could not be consolidated and were, therefore, left out of consideration. The remaining taxing and governing bodies were consolidated with the city government; and the control of their finances was placed in the hands of the city council and the mayor, who would then naturally become responsible for their policy. The appointment of all boards was vested in the mayor.

The second important feature of the charter was the granting of broad powers of local government to the city of Chicago. For many

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years the city had suffered from lack of local authority. In its first session, the convention had indicated its desire to secure a "comprehensive, simple, and elastic charter for the city of Chicago, granting to the city the largest practicable measure of local home rule, subject only to such general statutory safeguards and restrictions as may seem necessary to protect the general interests of the State as distinguished from the local interests of the municipality." The distinction between the municipal charter and the municipal code to be enacted under that charter, it had been insisted, should also be constantly borne in mind, and also that a municipal charter should be a grant of broad powers and definite limitations under which municipal codes and the methods and agencies of municipal government could be constantly adapted to meet the changing needs and wishes of the city. In pursuance of this purpose, the charter convention agreed upon the following section:

"The legislative power of the city shall extend to all matters of local legislation and municipal government which can be constitutionally delegated to it by the legislature, subject to the provisions of this charter and to all general laws of the State that are not modified or superseded by this charter, it being the intent hereof that the specifications of particular powers by any other provision of this charter shall never be construed as impairing the effect of the general grant of powers of local government hereby bestowed; but no taxes shall be imposed or levied except as hereinafter authorized."

But the home rule provisions of the charter were not confined to any one of its articles. The act was drawn in a liberal spirit and broad grants of power were scattered through the document.

The city was given a grant of police power, as follows:

"9 1. The police power of the city shall extend to the prevention of crime, the preservation and promotion of local peace, safety, health, morals, order and comfort, and to the prevention of fraud and extortion within the community, by measures of regulation, licensing, requirement of bonds, examination, inspection, registration, restraint and prohibition, as well as by establishment of municipal services."

It was also provided that the regulation by State law of a matter within the police power of the city should not prevent the council from making additional regulations on the same subject, if they did not

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conflict with State law. An example of this would be found in tenement house regulation.

Under Public Education (art. xix) it was declared that:

"19 26. The specification of the powers herein granted is not to be construed as exclusive, but the board of education shall exercise all powers that may be requisite or appropriate for the maintenance and fullest development of an efficient public school system."

Under Finance (art. xi) the council was authorized to appropriate money for any corporate purpose; and this was defined as including "any legitimate object of municipal interest or activity not contrary to the provisions and limitations of this charter, for which the legislature has power to authorize the expenditure of city funds or the exercise of the power of local taxation." (Section 1.)

Under Corporate Powers (art. viii) the scope of the city's power of action was greatly extended.

Art. viii, sec. 20, provided that:

"8 20. Municipal services may be performed and municipal works carried out either through contracts entered into for that purpose or by the city directly by means of its own material and of labor employed by it."

Under Public Utilities (art. xvi) the city was authorized to own and operate, or to regulate and require adequate publicity regarding all public utilities.

The city was given broad power to provide for aid, relief and correction (art. x), including authority to care for the indigent, to maintain almshouses, municipal lodging houses and farms for the unemployed, free employment bureaus, crèches, dispensaries, hospitals, institutions for juvenile delinquents and dependents, and workhouses or jails; and to coöperate with Cook County in the work of charities and corrections.

It was also provided that:

"Any act of the general assembly that shall be passed after the going into effect of this charter relative to the government of the affairs of the cities of this State in general or of cities containing a stated number of inhabitants or over, or allowing the formation of new municipal corporations in any part of the State, shall, in the absence of an express declaration of a legislative intent to the con-

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trary be construed as not applying to or operative within the city of Chicago."

In addition to this, the charter contained provisions granting the city of Chicago full and exclusive power to pass ordinances relative to the observance of Sunday, notwithstanding any general laws of the State. For a generation the Sunday closing law had been a dead letter in Chicago, and this clause was designed to permit the city to provide for such legal regulation as it might see fit.

The charter also provided that the city council might amend any section of the charter, excepting the provisions on taxation and public utilities, and such other sections as contained express prohibitions or restraints on the power of the city. The section read as follows:

"5 4. Wherever this charter makes any provisions or regulations with regard to a matter, the regulation of which the legislature has power to delegate to the city council, the city council may adopt an ordinance regulating such matter in whole or in part, and submit to the voters of the city, in the manner provided for the submission of propositions to popular vote, the question whether the provisions of the charter (which shall be designated in the ordinance by title, article, chapter, and section as the case may be) regulating such subject matter shall be discontinued and the ordinance adopted by the city council be substituted in their stead. If the voters of the city shall vote in favor of such discontinuance and substitution, the provisions of the charter so designated shall from thenceforth be inoperative within the city, and the ordinance so adopted shall take effect. No ordinance amending or repealing such ordinance or amending or repealing any ordinance that may subsequently be substituted for it, shall go into effect until such ordinance shall have been approved by a majority of the voters of the city voting upon the question.

"This section shall not apply to the provisions on taxation or to the article on public utilities, or to any provisions of this charter expressly prohibiting or restraining the exercise of particular powers by the city or any department or officer thereof."

The third important feature of the charter was the provision respecting revenue. The lack of adequate funds to carry on properly the work of the municipality had been for many years one of the most serious drawbacks to the advancement of Chicago. The revenue of

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all of the local governments, including the city's proportionate share of the revenue of the County and the Sanitary District, was only $20 per capita as compared with $29 for New York City, $40 for Boston, and an average of $26 for all American cities having a population of over 300,000.[2] Furthermore, the debt of the city of Chicago was proportionately far below that of any other great city in the world. Including the debts of the various local bodies and the city's proportionate share of the debt of the Sanitary District and the county, the total indebtedness was only about $60,000,000, or $30 per capita. The average debt of all American cities over 30,000 is $58.48. In fact, the debt of the city corporate had scarcely been increased at all since 1870.

In order to overcome these very grave difficulties, the charter provided for an increase in the maximum tax rate of about two mills, or a city rate of 5 per cent to be levied on a valuation which is legally one-fifth of the assessed valuation. This would have made possible, on the basis of the valuation at that time, an increase of about $6,000,000 a year. It was also provided that the debt of the city might be increased to 5 per cent of the assessed value of the property of the city, providing that the city assumed the debts of all the governing bodies consolidated with it and its proportionate share of the debt of Cook County and of the Sanitary District. The present limit is 5 per cent on the one-fifth valuation. This would have made possible an increase in bonded indebtedness of about $40,000,000 and a total debt of about $100,000,000. Authority was given to levy a tax to pay the interest on the debt incurred and to provide the necessary sinking fund. It was stipulated, however, that no issue of bonds could be made unless the proposition had been submitted to the people and approved by them. No opposition was made to these revenue features of the charter in the convention, although representative men of all classes were members of that body.

Along with these provisions, there were important changes in the special assessment law. The most significant of these was the requirement that the city should hereafter pay one-half of the expense of

[2] These facts were analyzed and discussed in the writer's report to the City Club on the Municipal Revenues of Chicago (1906).

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repaving streets of the city once paved after the adoption of the charter. At present, practically nothing is contributed for this purpose. At the same time, the city was authorized to provide for a special tax upon all vehicles used upon the streets of the city, and the proceeds of this tax were to be devoted exclusively to a street repair fund. At present practically no appropriation is made for the repairing of streets. The city was furthermore authorized to exact compensation for the use of subsidewalk space, and to license all trades, occupations, and businesses.

Other important changes made in the charter were the introduction of a direct primary law, a corrupt practices act, the elimination of the party circle from the ballot, the change in the date of electing municipal court judges from November, the date of general elections, to June, and the extension of civil service regulations to the employees of the municipal court. An effort was made to secure a provision for the nomination of candidates for elective office by petition only. This was strongly urged by Mr. Walter Fisher and others, but was finally defeated by a vote of 22 to 30. Although the party circle was removed from the ballot in accordance with the provision of the charter, the party column was retained. The subject of woman's suffrage was debated at length, but the extension of the ballot to women was finally defeated by a tie vote. Especial provision was made for tenement house regulation and control (ix, 16).

Some important changes were also made in the organization of the city government. The term of aldermen was extended from two years to four years in order to meet the change in the term of the mayor made in 1905. At the same time the salary of the aldermen was increased from $1500 to $3500. The city clerk was taken out of the list of elective officers, leaving the mayor and the city treasurer the only administrative officers to be chosen by popular vote.

The public utility sections of the charter were of great importance. The city was authorized to own and operate any public utility including "street and other intramural railways, subways and tunnels, telephone and telegraph, gas and electric light, heating, refrigerating and power plants," and to fix the rate and charges for the service rendered by means of such utilities; to require publicity regarding the business of public service corporations; and to acquire, by purchase, condem-

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nation, construction, or otherwise, whatever property, real or personal, might be necessary or appropriate. The provisions of the Mueller law authorizing the issue of special certificates constituting an obligation against only the property acquired by the city, were by this section extended to all local public utilities. In addition to this, an optional referendum, in case of all franchise grants for a longer period than five years, was provided. If, within sixty days after passing of any such ordinance, a petition signed by 10 per cent of the registered voters of the city was presented, then the ordinance should not go into effect until it had first been submitted to popular vote, and had been approved by a majority of those voting on it.

The public school system was made a department of the city government, instead of a half-independent body. The number of members of the board of education was reduced from twenty-one to fifteen, appointed by the mayor for a term of three years. The board was required to appoint a superintendent of education, a business manager, and a secretary for terms of not more than four years; and these officers were made removable for cause by a majority vote of the board. The superintendent was given general supervision, subject to the board, of the courses of study, text books, educational apparatus, and discipline and conduct of the schools. Appointments, promotions and transfers of teachers, and introduction of text books and apparatus, might be made only upon the recommendation of the superintendent, except by a two-thirds vote of the board. The business manager was given general care and supervision of the property and routine business of the department, but was subject to the general direction of the board. Under the business manager were the chief architect, in charge of a bureau of buildings and construction, and a chief engineer in charge of matters relating to heating, ventilation and sanitation of buildings.

Appropriations for educational purposes were to be made by the city council on the request of the board of education, as in the case of parks and library.

Finally, the board was given a grant of authority to exercise all powers that might be requisite or appropriate for the maintenance and fullest development of an efficient school system, and the powers not specially enumerated were not to be considered excluded, as would ordinarily be the case (section 26).

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Other less vital features were the authorization of the council to investigate any department of the city government, the official acts and conduct of any city officer or employee, and the negotiation, terms and performance of any public contract, and the accompanying power to compel the attendance and testimony of witnesses and the production of relevant books and documents (art. vi, 9). The anti-pass section forbade any municipal officer or employee to ask or accept any "free pass, frank, gratuity, gratuitous service or discrimination from any person or corporation holding or using any franchise, privilege, or special license granted by the city, or from any public service corporation whatever" (art. vi, 7). Another clause provided that "the city might maintain an action to restrain by injunction a violation of any of its ordinances, even though the ordinance provided a penalty for violation" (ix, 19).

These were the most important provisions in the charter as it was prepared by the convention, and presented to the legislature in March, 1907. In the meantime, however, a fierce battle had been begun over the choice of a mayor of the city of Chicago. Little or nothing was done with the charter until after the April election, when a republican mayor was chosen for the first time in fourteen years. The consideration of the charter was then begun by the State legislature, and occupied its attention during much of the remaining part of the session. The strongest opposition to the charter in Springfield centered around the home rule features of the document. It was declared that these provisions were equivalent to an ordinance of secession, and that Chicago was endeavoring to separate herself from the rest of the State. A strong effort was made to secure the passage of a constitutional amendment providing that the representation of Chicago in the new legislature should never exceed one-third of the total number, regardless of the population of the city. This was defeated by reason of inability to secure the necessary two-thirds vote to initiate the amendment. An attempt was also made to limit the city to a series of enumerated powers, particularly specified. In the end, however, the home rule sections of the charter were passed substantially as presented to the legislature by the convention except that the power to regulate the observance of Sunday was omitted. The revenue features of the charter were also left practically undisturbed, except that

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the charter provision authorizing the city to exact compensation for subsidewalk space was eliminated from the bill.

While these broad powers were granted to the city and while ample revenues were allowed, many other progressive features of the charter were badly butchered by the legislature. The charter provision for a direct primary law was entirely eliminated and an antiquated act inserted in its place. The provision for publicity in regard to campaign receipts and expenditures was stricken out. The party circle was restored to the ballot without much discussion. The provisions for extending the civil service to the employees of the municipal courts were quietly disposed of, and the change of the date of the election of municipal court judges was also consigned to oblivion. This was not all, however, for the number of wards in the city was changed from thirty-five, the present figure, to fifty, and the city was gerrymandered in a wholly unjustifiable way. For years the city council has been practically evenly divided between republicans and democrats, but, under the proposed apportionment, the council would stand at 32 republicans to 18 democrats. Furthermore, the apportionment was drawn distinctly in the interest of certain factions of political parties; and finally it was provided that the lines so drawn should not be altered until after the census of 1920.

The civil service provisions of the charter were also altered by the legislature. Heads of departments were given authority to discharge employees for cause and the present right of trial of municipal employees under such circumstances was taken away. It was provided that the civil service commission might, in its discretion, require a trial; but this was placed entirely in their option. A number of other minor changes were made by the legislature none of which was vital in its nature, but the total of which produced an unfavorable impression. For example, the "anti-pass" section was restricted by the provision that the persons or corporations concerned must be those "whose business is confined to the city of Chicago." One of the revenue sections was carefully trimmed by omitting the italicized words in the following clause:

"12 3. The city council shall have power to impose an occupation or license tax upon any trade, occupation or business carried on wholly or in part within the city limits, *and upon all persons, firms or*

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corporations holding or using franchises or privileges wholly or in part within the city."

To the educational section was added the requirement that "Text books shall not be changed oftener than once in four years" —a clause that had been negatived by the charter convention after a sharp debate. The section authorizing tenement house regulation was badly mutilated.

Had the charter been passed by the legislature as it came from the charter convention, there is little doubt that it would have been approved by the people without much opposition. But the series of compromises laboriously negotiated in the convention with a view to pacifying all parties and all factions was broken down, and what had been harmony was transformed into violent discord. The fate of the charter did not long remain in doubt. Early in the summer the democratic organization declared against it, which, as Chicago is normally democratic on local questions, was alone sufficient to guarantee its defeat. The republican organization declared for the charter and undertook a campaign in its favor. But a large element of the republican organization had been unfairly treated in the ward apportionment, and was never more than lukewarm in its activity. Among the independent voters, widespread distrust was created by the action of the legislature in eliminating the direct primary law and the corrupt practices act, in striking out the provisions regarding the party circle and the election of municipal court judges; and in inserting a ward gerrymander in a home rule charter. The United Societies, an organization comprising about 500 societies, and representing about 90,000 voters, was greatly incensed at the failure of the legislature to enact the charter provisions regarding the regulations of Sunday observance, and was very energetic in the campaign against the charter. The intimation of the mayor to the United Societies that the saloons might be closed on Sunday unless opposition to the charter ceased, had the inevitable effect of arousing their enthusiasm to a still greater degree.[3]

The Federation of Labor also denounced the charter, for the reason

[3] The United Societies of Chicago consists of a membership of about 490 societies. "They include the Belgian-American Club, the Bohemian Benevolent Association, sixty lodges of the First Bohemian Catholic Society, the Concordia Mænnerchor, the Chicago Turn-Gemeinde, the Croatian Liberty Society, the Germania Club of Chicago,

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that "the charter is a poorer and weaker instrument than that which the charter convention framed. All real reform and improvement seems to be purposely excluded."[4] They also objected to the four years' terms for aldermen, to the removal of the city clerk from the list of elective officers, to the increased power of the mayor, to the discrimination against workingmen's wards in the new apportionment, and to any increase in taxation unless the system of taxation were fundamentally changed.

The Federation of Teachers opposed the charter because of the provisions regarding the school system. The Woman's Suffrage Association attacked it because of the failure to grant the right of voting in municipal elections to women. The South Park board, which enjoys the lion's share of the revenue for park purposes, since the valuable property of the business district of the city lies within its borders, was also energetic in its opposition to the consolidation features of the charter. The cry of increased taxation and debt was raised, and used by all who for any reason opposed the adoption of the charter, and especially by those who during the Convention opposed any limit on the local tax rate. An exceptional increase in the assessed valuation of property during the summer of 1907 made the objection more vehement.

Against all of these forces there remained only the republican organization, or rather one faction of the organization. The inevitable result, long foreseen by those familiar with the situation, was the decisive defeat of the charter. The vote was 59,786 for, and 121,935 against, while the registration was 361,968.

the First Hungarian Social and Sick Benevolent Association, the Krieger-Verein (Town of Lake), the Kreiger-Verein (South Chicago), the King Sobieski Society, the Luxemberger Philharmonic, the Luxemburger Sængerbund, the Militair-Verein, the Nord Chicago Mænnerchor, the Plattdeutsche Gilde (46 sections), the Pulaski Cavalry, the Roos Society, the Sant-Aldessandro Sokol Polski (Town of Lake), the United Swiss Organizations of Chicago, the United Croatian Societies (40 lodges), the Walhalla Society—in all 490 societies, representing over 90,000 voters of Chicago."

[4] At the close of the convention, Mr. Linehan, one of the leading labor members, had voted for the completed charter, and said, "If the members will organize, I will take pleasure in proposing them as delegates to the Federation of Labor."

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AN ILLUSTRATION OF LEGAL DEVELOPMENT—THE PASSING OF THE DOCTRINE OF RIPARIAN RIGHTS

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Contemporary with the recent and very rapid industrial development of the United States has been observed an unexampled liberality of juristic thought. Especially has the process of settlement and industrialization of the West been pervaded by certain unusual social and economic influences, and likewise has been comparatively free from that judicial conservatism prevalent during the periods of colonization and settlement of the eastern and central portions of the country. Extremely dynamic forces, finding their origin in the manner of settlement, the physical characteristics of the country, and the personal attributes of the population, readily developed what may be termed specialized forms of social and legal institutions. As economic and political factors have become adjusted and a stable social poise has been approached, some of the diverging branches of the new socio-political life of the West have been pruned back to antecedent form, but others have become component parts of a permanent organization. Incident to the perpetuation of an unusual industrial structure, there have come about the development of new legal concepts which have assumed special relation to property rights in natural resources. This was possible only upon the abrogation of common law precedents and the renunciation of doctrines formerly conceded to be fundamental in American practice.

It cannot be asserted that the tendency to innovation evidences a changing conception of the aim of the law, but rather a recognition of the original or primitive relativity of its process and object. In this conception of law and lawmaking forces, remote experience need not govern present methods, and established precedents do not necessarily set forth, either in detail or in principle, law sufficient to actual

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and potential needs.[1] The formation of rules of action in harmony with prevailing and potential environment is properly designated as *scientific*, when contrasted with the legal orthodoxy of following precedent for no other reason than that of custom. That is not an unusual juristic philosophy which grants prevalence to time-established principles, solely because of former recognition and application, *proprio vigore*—considerations which may neither find their source in the actualities of a dynamic society nor their object in a harmonious socio-economic adjustment. The development of a wholesome regard for circumstantive and collective consideration in legislative and judicial processes is now commanding wide attention and is entirely salutary. Cases in point are not lacking. The absolute right of private property, the revered function of the last will and testament, and the domain of freedom of contract are rapidly being invaded; and an innovation which strikes even deeper into the vitals of the common law is exemplified by the progressive abrogation of the doctrine of riparian rights.

That portion of North America lying west of the ninety-seventh meridian, composing over 40 per cent of the United States and a considerable proportion of Canada, receives an insufficient rainfall for the ordinary needs of agriculture. Of this area, a portion comprising seven States and two territories,[2] together with the major portion of the Northwest Territories of Canada, is generally arid, having an annual precipitation less than half sufficient for the maturing of farm crops. Seven federal States[3] and a corresponding proportion of Canada are semi-arid. Certain sections of these States lie within the rain belt and other sections are arid or subject to intermittent years of aridity.

The steadily accelerating settlement of this western country, extending over an entire period of little more than fifty years, and in most districts of less than half that time, occupies a dynamic era of economic development and exponential growth of legal institutions

[1] Deane Mellville M. Bigelow, of the Boston Law School, has recently admirably presented this *scientific* conception of the law. See New National Forces and the Old Law, *Atlantic Monthly*, December, 1906.

[2] California, Colorado, Idaho, Montana, Nevada, Utah, Wyoming, Arizona and New Mexico.

[3] Kansas, Nebraska, North Dakota, Oregon, South Dakota, Texas and Washington.

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without precedent in the history of the Anglo-Saxon race. Notwithstanding the facts that irrigation is one of the oldest arts of civilization, that the greatest nations of the ancient world maintained dominion for centuries in a rainless climate, and that, at the time of the first diversion of a western stream for the purpose of irrigation, 135,000,000 acres in foreign countries were being artificially watered and were sustaining dense populations, Anglo-Saxons are not known to have attempted the reclamation of arid lands until 1847.[4] Since the beginning of history, this conquering race has been content to take for itself the humid parts of Europe and America while its weaker Romance rival has been confined to the supposedly less productive arid reaches of the continents. With the occupation of Utah,[5] California,[6] Colorado,[7] and the succeeding States of the mountain and Pacific groups, came the realization of unfamiliar climatic conditions which could only be met by modified industrial methods. Unusual physical conditions and a necessarily revolutionized system of industry at once reflected themselves in social relations and customs. It is a recognized axiom of social law that economic conditions, in themselves extraordinary, tend to give rise to equally unique political institutions. For this reason, there is being brought about in Western America an innovation in Anglo-Saxon law which promises to fall not far short of a revolution in our system of juristic thought and legal construction.

Of special significance, is an independent and scientific development of rights of user in inland waters, and, at the same time, an unconscious recognition of the fundamental principles of a social theory of property, in so far as property may be made to comprehend rights to the use of streams, lakes, submerged waters, and glacial snows for the purposes of agriculture and mining. In spite of the more or less general recognition of the postulates of the common law of England, contemporary with early Anglo-Saxon sovereignty, the innovation was facilitated by virtue of the former prevalence of the civil law and the lapse of recognized precedent incident to the transfer of sover-

[4] The Mormon colonists of Utah first diverted the waters of City Creek, near Salt Lake City, for the purpose of irrigation in the summer of 1847.

[5] 1847.

[6] 1849.

[7] 1859.

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eignty from France, Spain, and Mexico. The civil law is itself native to the arid lands of southern Europe, and its construction of the law of waters is accordingly in marked contrast to that of the English law. However, a loose application of the principles of the civil law under Mexican administration was not of itself sufficient to substantiate present juristic doctrines of the arid country. Even in the cosmopolitan settlements of the early West, a dominating respect for English legal principles was apparent. The significant factor of the situation lies in the fact that, in the absence of an effective ultra-conservative element, society found itself in the position of choosing from the two historic systems of jurisprudence the parts of each best suited to its economic needs. With regard to the law of inland waters, the choice of legal principles was deliberate, and the rapid development and elaboration of these principles has been generally quite positive in the recognition of a scientific relativity of law, economic expedience, and social welfare.

The political divisions of the arid West, in both Canada and the United States, have abrogated the common law doctrine of rights in inland waters by constitutional provision, statute, or judicial decision.[8] The States have been free to act for themselves upon the question of water rights within their boundaries,[9] but the status of rights in interstate streams, especially where the States concerned are partisan in their attitude upon principles of riparian rights, presents a problem of no small significance and one whose solution is delegated to the

[8] In the seven arid States (see note 2), with the exception of California and Nevada, and in the Northwest Territories the abrogation of the common law doctrine was accomplished by statute or constitutional provision. California nominally retains the common law. Nevada, after having followed California's common law precedents for many years, through the supreme court, reversed all previous holdings, as being irrelevant to existing climatic conditions (Jones v. Adams, 1885, 19 Nev., 78; Bliss v. Grayson, 1889, 56 Pac., 231), which decision has since been enacted into statute. In California and the several States of the semi-arid belt, the common law of water rights has been so distorted by statute and judicial decision as to amount to a practical nullification of the doctrine of riparian rights.

[9] The States assumed nominal as well as actual freedom in the control of natural waters within their boundaries upon the passage of the federal acts of 1866 and 1870. These acts were supplementary in making public lands, then occupied and to be occupied or appropriated, subject to prevailing local laws and customs.

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future.[10] The wide significance of the question at issue, in its relation to the respective fields of national economy and legal theory, justifies a brief review of the evolution of the respective doctrines of *common law riparian rights* and *priority of appropriation and beneficial use* of inland waters.

The United States inherited from Europe two systems of jurisprudence—the *common law* of the New England colonies from England, and the *civil law* which came through Florida, Louisiana, and Mexico, from France and Spain. The geographical extension of the common law, as occupation and settlement moved south and west, is familiar, as is also the nature of the corresponding decline of the civil law of the French and Spanish colonies as they gave place to federal authority.

THE COMMON LAW DOCTRINE OF RIPARIAN RIGHTS

The elementary principles of the common law doctrine of riparian rights are clearly stated in the *Corpus Juris Civilis*, as recorded by

[10] The question of rights in inter-state streams for purposes of irrigation was recently brought before the Supreme Court of the United States in such a way as to directly involve the respective claims of the common law and the western doctrine of priorities. The case in question (Kansas v. Colorado, et al.) concerned rights in the use of the waters of the Arkansas River—an inter-state stream having its headwaters in Colorado and flowing through Kansas. Colorado, being an arid State, appropriated the waters of the Arkansas for purposes of irrigation in accordance with the so-called doctrine of appropriation. Kansas invoked the doctrine of riparian rights under the common law to force Colorado irrigators to release the waters of the stream that they might flow without diminution and in their natural channel for the benefit of the riparian proprietors of a somewhat less arid territory. The defense of Colorado rested, first, upon the question of actual diminution of the flow of the stream within the State of Kansas, and, finally, upon the natural conditions and necessities of an arid climate supported by the doctrine of appropriation, as incorporated in the constitution of the State and sanctioned by the constitutional powers of Congress together with the provisions of the national statutes as found in sections 2339 and 2340, U. S. Revised Statutes. A third contention was introduced into the suit by the filing of a petition in intervention, on the part of the United States, disclaiming the justice of the claims of either party to the suit, as affecting the rights of the government under the reclamation act and as original owner in the settlement and sale of lands belonging to the United States. After long deliberation, the court appeared unwilling to take advanced ground upon the question of water rights on inter-state streams and temporized the entire matter by dismissing both the petition of intervention and the bill of the State of Kansas without prejudice to the rights of either to renew the claims upon similar and sufficient grounds. (Kansas v. Colorado, et al., decided May 13, 1907.)

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Justinian, which establishes the origin of the present law. Riparian rights, as there set forth, secured to the public certain uses of navigable streams and of their banks as against landed proprietors bordering such streams.[11] The titles of the *Pandects of Justinian* which form the basis of the common law rights, refer only to navigable streams and the use of their waters. Their terms are prohibitory upon the proprietors of riparian lands, and recognize the right of all such uses by riparian dwellers as will permit streams to pass from their lands with their efficiency for public use unimpaired, thus granting privileges of domestic and mechanical use and inferring privileges not at all inconsistent with irrigation.

Although certain provisions of the Roman law were resolved into an axiom of the common law of England, the fact remains that the riparian doctrine taken over by the English did not exhaust the resources of the Roman law respecting the use of water. Natural streams were widely used for irrigation, even in Roman days, and a substantial body of law pertaining thereto, having no utility under English economic conditions, was not perpetuated. The law, as preserved in the *Pandects*, not only demonstrates the fact that English practice has not sounded the depths of the Roman law, but that American innovations, even to the degree of abrogating the riparian right of the common law, may not reverse any Roman precedent.

Having become an English institution, the doctrine of riparian rights was further modified. The most remarkable modification was the extension of the law of navigable and tidal waters to include inland and non-navigable streams. In formally effecting this expansion, Lord Selborne, in a decision and opinion, even now cited as a comprehensive statement of the common law, said: "There is no distinction in principle between the riparian rights on the banks of navigable and tidal, and on those of non-navigable rivers."[12] Soon there-

[11] The language of the Roman law is as follows:

"Uses of a river for navigation or of its banks for tying boats and landing cargo are public, but banks and all thereon growing are property of those whose land they adjoin." (Justinian, *Digest*, 43, 12, i.)

"Whatever in a public river or on its banks you do, or whatever into a public river or upon its banks you put, whereby the landing or navigation is made worse, you shall restore the former condition." (Justinian, *Digest*, 43, 12, 1, 19.)

[12] Lyon v. Fishmongers Co., 1 App. Case, 662.

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after England extended and applied the same law to the shores and waters of inland lakes. As a result of the English transformations, the original object of the riparian right—a guarantee of public use against riparian claimants—was entirely lost, and the law became the remedy of certain private owners against other proprietors and against the public as the claimant of resources unappropriated.[13]

As modified by English practice, the doctrine of riparian rights was incorporated in the organic law of the United States.[14] For many years, what may be called an ultra-conservative defense of this doctrine has been assailed in America, especially in the western areas. In England, the chief significance of the law concerns tidal waters, although the principle is declared alike applicable to other streams. In America, the unusual size and the commercial and industrial importance of many rivers above tidal waters transfers the most important sphere of riparian rights to inland waters not tidal. American inland waters not only represent economic factors unknown in England, but streams and lakes of western America are of industrial importance not conceivable in the States of the East. Southeastern

[13] Chancellor Kent's definition of riparian rights has met with universal approval within the jurisdiction of English practice: "Every proprietor of lands on the banks of a river has naturally an equal right to the use of the water which flows in the stream adjacent to his lands, as it was wont to run (*currere solebat*), without diminution or alteration. He has no property in the water itself, but a simple usufruct while it passes along. *Aqua currit et debet currere ut currere solebat* is the language of the law. Though he may use the water while it runs over his land as an incident to the land, he cannot unreasonably detain it, or give it another direction, and he must return it to its ordinary channel when it leaves his estate. Without the consent of the adjoining proprietors, he cannot divert or diminish the quantity of water which would otherwise descend to the proprietors below, nor throw the water back upon the proprietors above, without a grant or an uninterrupted enjoyment of twenty years which is evidence of it." (3 *Kent's Comm.* 439.)

[14] In its generally accepted form, the doctrine of riparian rights, as applied in the United States, is as follows: "The water of permanent running streams and of inland lakes is sacred to the common use alike of all riparian proprietors upon their borders. Each proprietor may use the water for all reasonable purposes as it passes through or by his land, provided that he does not interfere with the public easement of navigation in all navigable lakes and rivers; but he must, after its use, return it without substantial diminution in quantity or change in quality to its natural bed or channel, before it leaves his own land, so that it will reach his adjacent proprietor in its full original, and natural condition. . . . More extensive or exclusive rights than these against other riparian proprietors can only be acquired by grant from them, or by prescription which presumes a former grant." (Black's *Pomeroy on Water Rights*, p. 4.)

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and central States have modified the letter of the doctrine to meet their physical and industrial conditions, and the federal government, through the supreme court, has acknowledged the necessity of their action.[15] The use of flowing streams for lumbering and water power, comparatively insignificant in England, has been of much consideration in America, and for this reason liberal interpretations of the common law have occurred with increasing frequency and latitude of application. With the settlement of the West, still more extraordinary physical conditions were encountered and everything possible was done to control the new situation by the old law.

In the evolution of riparian rights, the redefining of significant terms of the old formula has proved a resourceful practice. "Reasonable" or "ordinary" uses of natural waters, as prescribed by the old law, was originally ascertained by the determination and satisfaction of *natural* as opposed to *artificial* wants. A reasonable use, therefore, was such as was absolutely necessary to man's existence, and unreasonable and forbidden uses ministered merely to the artificial wants of increasing comfort and prosperity. Under more recent judicial decisions, however, is observed a reconstruction of the "ordinary" use justifying, even in England, a modified legal acceptance of the term which becomes more and more flexible as the situs of its application moves westward to the Pacific States. The forbidden "diminution" of the flow or "change" in the quality of the stream has been modified by the introduction of the conveniently elastic adjective *substantial*, which is interpreted to infer nothing less than a measurable injury to riparian proprietors above or below, and has frequently been held to justify such use of streams as shall inflict the least possible injury to other proprietors consistent with the exigencies of the case.[16]

[15] 7 Wall., 272, 11 Federal Rep., 389.

[16] Modern practice in the United States has evolved the following *arid region* definition of riparian rights under the common law: "Every proprietor of land on the banks of a natural stream has an equal right to have the water of the stream continue to flow in its natural course as it was wont to run, without diminution in quantity or deterioration in quality, except so far as either of these conditions may result from the reasonable use of the water for irrigation or other lawful purpose by upper proprietors. He may himself use the water for necessary purposes in a reasonable manner, having due regard to the rights and needs of other proprietors, provided he returns to its natural channel, before it leaves his estate, all the water not necessarily

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Resort has also been had to a redefining of "riparian lands" with respect to the nature of their title and the limits of their extent back from the stream. Court decisions have actually denominated lands of one watershed as riparian to streams of another. The diversion and return of water at points upon the land of the appropriator has been widely held by both courts and statutes to be an unessential element of the common law doctrine, and right of way has been acquired, through condemnation proceedings, over the estate of another.

The use of riparian waters for irrigation, while broadly held to be artificial or extraordinary and in conflict with the common law, has been conceded, under varying constructions of a "reasonable degree," not only in the nine common law States of the West, but also by the supreme courts of eight humid States[17] several times by the federal courts, and in at least five scattering cases in England. The consumption of all the water of a natural stream for irrigation, to the exclusion of lower proprietors, has frequently been held permissible.

A unique defense of the appropriation of water for irrigation in California and the recognition of priorities under the nominally prevailing common law is based upon the presumption of a grant. Under the common law, riparian rights of an extraordinary nature and for unusual purposes may vest by virtue of a grant or prescription, which may be presumed after an uninterrupted use for twenty years. It is seriously advanced that the United States, as lawful proprietor of public lands and inland waters, abetted by the state of California, through financial assistance and legal protection, permitted and promoted the diversion of water for irrigation, and that such permission and encouragement, continued for a sufficient number of years, becomes adequate grounds under the common law for the presumption of a grant of perpetual right.[18]

consumed in his own lawful use. The right of the riparian owner is limited to a simple usufruct in the water as it passes along, and does not include a proprietorship in the water itself." (*Long on Water Rights*, ch. ii, ¶9, and cases there cited.)

In the arid districts, the general question of a riparian right touches the authority of the proprietor to take water from the stream, while in the earlier jurisdiction of the common law the right to a continuous flow was more frequently sought.

[17] Alabama, Connecticut, Maine, Massachusetts, New Jersey, New York, Pennsylvania, and Wisconsin.

[18] Opinion of Judge Heydenfeldt in Conger v. Weaver, 6 California, 548.

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It is not maintained that all interpretations and modifications of the common law doctrine noted above are now considered good law and of general application, but a half century ago such pronunciamentos would have cast serious reflection upon the mental processes of their author. However, as established common law precedents now stand, there is apparent a strong evolutionary tendency in the general interpretation and application of the riparian doctrine, even in districts which do not include arid lands. Changed physical and economic conditions have so modified the subject matter of property, the protection of which is the object of the law, that jurists have, of necessity, expanded the terminology of the law and taken exception to its earlier intent. The action of several western States, in the nominal retention and strained interpretation of the common law, is proof that natural conditions make expeditious and imperative a modified conception of its spirit if, in name, it is to be retained.

Excepting California, the arid States and territories of the West, together with provinces of Australia and the northwest territories of Canada, have formally abrogated the common law as affecting the use of flowing waters. As to the action of California and the semi-arid States, in its nominal retention and open violation, it is a question whether they have extended the right of riparian ownership beyond that vested at common law and have entirely subverted and destroyed common law rights in inland waters. Optimistic views of the situation in California[19] would make it appear that the common law doctrine of riparian rights and the doctrine of appropriation for beneficial use have come to rest amicably side by side in that State; that the two principles underlying property in water are not only non-contradictory but, in fact, harmonious and supplementary.[20] Such an attitude may be justified on the part of a practitioner at the bar of the State in question; but it is incredible that two doctrines of law having

[19] The southern part of California is distinctly arid, and highly developed agricultural industry demands a most scientific and economic distribution of water for the purposes of irrigation. The humidity of the State increases with the latitude and the northerly portions are not confronted with the serious problems of extreme aridity, peculiarly productive horticultural lands, and insufficient water supply. For this reason, economic interests differ widely in different sections of the State, and to this cause may be traced the incongruity of existing laws.

[20] Wiel, *Water Rights on Western Streams*, §14.

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different origins, contradictory objects, and conflicting principles of theory and application should be made to yield to harmonious and supplementary application in establishing security of property in the resources of the same stream. It is likewise to be doubted that the highest possible industrial development may be attained under this dual system. Such incredibility is conclusively supported by the stream of water-rights litigation constantly pressing upon the courts of California and such other States as have attempted to emulate her dual system, when contrasted with the infrequent appeals to the courts in States like Wyoming.

THE DOCTRINE OF APPROPRIATION

The water laws of the States and territories identified with the abrogation of the common law doctrine of riparian rights are conceded to rest upon a theory of right in the use of water indigenous to the arid areas of the United States. This theory is not only antagonistic to the usages of the English doctrine, but invalidates its fundamental principle of property rights in inland waters.

During the occupation of the arid portions of the present national domain, previously recognized juristic institutions, in a measure, lost control of social forces. The civil law, incident to French and Spanish sovereignty, was of course annulled. The common law, little known and less respected, failed to command recognition as a general rule of procedure. The individualistic pioneer, struggling for mastery over a new country, naturally recognized expedience and right, appropriation and acquisition, as synonymous terms. Furthermore, judicial and executive agents were not sufficiently in evidence to give a positive force to any legal precedent which did not meet with the approval of the public and necessarily non-juristic mind. Under such conditions, social and legislative agencies, singularly untrammeled by inflexible conceptions of existing doctrines, entered upon the construction of custom and law unmindful of other considerations than those of economic and social welfare. In this way the doctrine of appropriation, as applied to the use of water, is said to have become indigenous to the United States, having been evolved upon the arid land of the West under conditions both socially and physically extra-

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ordinary, although not at all unnatural. The abstract doctrine, or the principle and theory conveyed thereby, was without doubt of less modern understanding and acceptance than was its initiation in the United States. In fact, this principle was a component part of the Roman law and supplemental to the identical passages from which were drawn the English laws pertaining to property in natural waters.

In so far as present law is concerned, the nativity of the doctrine of appropriation was contemporary with the exploitation of the gold fields of the Sierra Nevadas, inaugurated in 1848. The lands upon which the precious metal was found belonged to the United States, but they were unsurveyed and were not legally open to occupation and settlement. Within a few months following the discovery of gold in the sands of California, the cañons and mountain valleys of the district were populated by thousands of fortune seekers. They recognized no code of law, and possessed no trained legislative, judicial, or executive agents; but the admiration for order and system inherent in the Anglo-Saxon race soon put on foot a semblance of law and administration. Miners held meetings in various "bars," "diggings," and "camps" and enacted regulations by which, in lieu of other law, they agreed to be governed. These codes provided for a measure of security of persons and property, and their administration was singularly effective. The laws of the United States, as they were applicable to this country, vested title in real property in no one except by virtue of a few preëxisting Mexican grants recognized upon the accession of California by the federal government. Local legislation could not authorize property in natural agents, as against the United States; but, as among private persons, such legislation was justifiable and most necessary if industrial development was to persist.

The object of the codes of the early Californians, aside from that of personal safety, was to secure, within practicable limits, equity of right and privilege in acquiring and operating mines, and to secure justifiable property in natural resources. To best accomplish this, he was made first in right of property who was first in time of possession, and his utilization of that right gave him a valid claim against all others except the nation. Discovery followed by appropriation was recognized as a basis of title, and a specific amount of use or of development of the property thus acquired was a necessary adjunct

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to its retention. This principle of proprietorship had been strongly defended throughout the colonial periods of American history, and has long been the basis of the federal land policy.

Flowing water assumed a relation to the industry of the West, by virtue of the necessity of its use in both mining and agriculture, comparable in importance to that of the placer sand, the quartz vein, or the soil itself. Each was worthy of a use, each was limited in amount, and if a rule of appropriation and use was justifiable as an essential of the realization of property rights in the one, it appeared likewise a worthy essential of property in the other. So the economic law of expedience and a sense of justice declared that he who first turned the waters of a stream from its course, or of a lake from its bed, and applied them to beneficial use was first in a right commensurate with that use. This doctrine was inaugurated by the placer miners of California and, for a time, defended as their exclusive prerogative, but the application of a stream of water to an area of placer sand for the direct extraction of gold differs not, in principle, from the appropriation of a stream to an area of land for the creation of value through the medium of agriculture. Upon these premises was established the doctrine of priority of appropriation, by which has been defined the basis of property in water in the arid districts of America.

Until 1851, the status of the law in the West remained as formulated by the miners in their codes of local authority. In that year, the first legislature of California gave those voluntary regulations legal and compulsory efficacy by statute. For eighteen years, the local codes, as sanctioned by statute and moulded and applied by the courts, constituted the law governing property rights in mineral lands and flowing waters on the public domain. The sale of mineral lands was not authorized until July 26, 1866. In the first section of the act of that date, it was declared that mineral lands of the United States were free and open to exploration and occupation, subject to such regulations as might be prescribed by law and the local customs or rules of the inhabitants of the several districts, as far as the same were not in conflict with the laws of the United States. The act further provided that water rights established by priority of possession should be maintained and protected, and the right of way for canals and ditches for the purpose of diverting water for mining, agriculture, or mechanical

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use was acknowledged and confirmed.[21] The United States supreme court has designated this act as "a voluntary recognition of a pre-existing right of possession, constituting a valid claim to continued use." By this law, proprietors were enabled to establish permanent rights by government patent, and, by an act of July 9, 1870,[22] all subsequent patents were issued subject to previously vested water rights.

The federal statutes mentioned above paved the way for formal abrogation of the common law doctrine of riparian rights throughout the arid regions and confirmation of the new doctrine of appropriation, as applicable to both land and water. Prior to these enactments, however, the people of California found themselves confronted by the proposition of choosing between the two doctrines. It is charged that legislators were unfamiliar with conditions prevailing throughout the State and that certain special interests exercised an undue influence in the constitutional convention. In any case, the people of the State permitted the doctrine of appropriation, in so far as it pertained to the establishing of water rights, to be abandoned. In the constitutional law of the State, the simple customs evolved from natural conditions and frontier necessities were made the basis of the mining law, and upon this foundation hsa been developed what is perhaps the best body of mining law extant. In establishing water rights, however, the principle which had proved of equal efficacy in the acquisition and control of water and in the acquisition and control of mineral lands was disregarded, and the common law was declared to obtain throughout the State. At this period in the history of California, began a conflict of legal principles and economic factors which has materially injured the industrial development of the State by making title in highly efficient forces of production so insecure as to discourage their appropriation and reclamation.

For over half a century, the doctrine of appropriation, as worked out by the miners of California, has served as a basis in the construction of water law in the West. However, the doctrine has not remained without amendment, and its extension has been fraught with confusion and difficulty. Advocates of the common law, especially in the

[21] 14 U. S. Statutes, 253.
[22] 16 U. S. Statutes, 217.

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semi-arid States, have been active in opposing any legislation of contrary principle. The history of California reveals a determined and unsuccessful attempt to harmonize the two doctrines of water rights of contradictory fundamental interpretations. One has been destructively expanded and the other has been so confined as to destroy its broadest usefulness. Nevada emulated the dual system of California until, in 1889, hopeless entanglement caused the supreme court of the State to reverse its former rulings and adopt a positive theory applicable to the economic use of water in that State. As the several States and territories of the arid country have successively recognized and applied the principle of appropriation, the nature of its elaboration and the manner of its administration have varied within wide limits, but the primary principle remains unchanged.

An important tendency in the evolution of the law has been its recognition of different uses to which water may be applied. First designed to apply only to the gold placers of the Sierras, the law was soon extended to recognize agricultural and mechanical uses on a par with mining uses. In some States, notably Colorado and Wyoming, social and industrial progress dictated a changed order of importance and the agricultural use has come to be recognized as most essential and primary. Because of the varying intensity of needs in the different uses, the law was made to meet the order of the uses as well as to recognize the order of appropriation.

Colorado was the first State to incorporate the doctrine of appropriation in its constitutional law. The provisions of the Constitution of that State, relating to title in the use of waters, promulgate this doctrine in its generally accepted terms; and the laws of other States and territories recognizing the principle of the doctrine are derived from the Colorado law.[23] This law denies the riparian proprietor, as such,

[23] The provisions of the Colorado Constitution relating to the subject are as follows: "The water of every natural stream, not heretofore appropriated, within the State of Colorado is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the State, subject to appropriation as hereinafter provided." (Art. xvi, sec. 5.)

"The right to divert unappropriated waters of any natural stream for beneficial use shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the services of all those desiring to use of the

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any rights; that is to say, he has no usufruct of the water flowing in natural streams not open to others whose estates are non-riparian. The State asserts a sovereign ownership over the resources of all natural streams and vests a right of user in those who properly apply their waters to domestic, agricultural, or other purposes. The location of the lands of the user, with respect to the position of the stream, is of no legal consequence. They may border the stream or be remote therefrom. In fact, no reason appears why the streams of one watershed may not be diverted for the benefit of the lands of another, and such action has been sustained by the courts of both Colorado and Wyoming.

The development of the considerable body of irrigation law of the West has been entirely utilitarian, and proceeds upon the principle of economic policy. Its evolution has been rapid and its methods have been in harmony with efficient utilization of natural resources and, in the main, with equitable distribution of their use. It may justly be said that the courts have generally led in the movement of common law nullification and legislatures have been content to sanction the acts of the courts.

The new doctrine of water rights is not free from criticism and will invite frequent modification because of the wide and constantly changing economic sphere of which it is a part. Socio-economic conditions growing out of an inevitable dense population of irrigated areas—intensive and diversified culture, high water values, and coöperative enterprise—will demand a perfection of the law to which that of the present is rudimentary. Under present law, merely the right to irrigate and crude methods of administration are established. The exact nature of property in water for irrigation is not defined, nor can it be until industrial conditions become stable, for the nature of the right must be in harmony with the economic interests involved. The law reaches no conclusion as to the proper source and extent of administrative authority, and uniformity is not yet approximated. Interstate and international problems have not even been approached. The subject matter of domain was formerly considered to be immobile,

stream, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes over those using the same for manufacturing purposes." (Art xvi, sec. 6.)

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but now there appears a factor of real property which may not be confined within political boundaries. As long as conflicting property rights are maintained in adjacent States, inter-state difficulties will not be avoided. The Arkansas River, of Colorado and Kansas, is but one of numerous streams concerned, and its lands in Colorado, yielding an annuity of ten millions, represent only a trifling factor of the inter-state interests involved. Along the course of the Rio Grande, the State of Colorado, the territory of New Mexico, and the republic of Mexico still contend for exclusive privileges conferred by conflicting laws.

In spite of the many imperfections of the infantile legal institution based upon the doctrine of appropriation, its permanence is assured in America. It emerges from a conflict between the rule of precedent and judicial inertia on the one hand, and predominating economic forces on the other; between a time-honored anemic institution, and custom called into being by the necessary intensive application of natural utilities to social needs. The first was native to humid England prior to the industrial revolution, and the second is the natural outgrowth of the industrial conquest of a country of aridity, non-navigable streams, and superabundant lands. The one is reluctant to forfeit historical privileges and practices which are irrelevant under given conditions; the other recognizes national economy and collective interests, and contains the germ of an order of rights in industrial forces which bids fair to promote a scientific modification of existing conceptions of property.

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THE INITIATIVE, THE REFERENDUM, AND THE RECALL

Recent Legislation in the United States[1]

MARGARET A. SCHAFFNER

To make representative government more representative is the problem of today. The gradual process of social evolution has changed the industrial basis upon which our political institutions rest, and the increased complexity of our social organization has made the expression of the popular will more difficult. As readjustment to changing conditions is the requisite for any advancing type of life, so political progress becomes impossible unless new agencies are developed to be retained or discarded as experience may warrant.

Among the agencies for political expression, few have made more remarkable progress in the history of recent legislation than the initiative, the referendum, and the recall. State wide referendums for the adoption of State constitutional, and local referendums for local affairs, are familiar institutions in the United States, but it is only within recent years that our States have begun to adopt the initiative and the referendum for State legislation.

CONSTITUTIONAL AMENDMENTS FOR THE INITIATIVE AND THE REFERENDUM

Prior to 1907 a group of States, including South Dakota (1898), Utah (1900), Oregon (1902), Nevada (1904), and Montana (1906), had adopted constitutional provisions.[2] Some of these amendments were imperfectly drawn and lack of experience as to the practical workings of direct legislation in certain cases led to the omission of essential

[1] The writer is under obligation to the Hon. George H. Shibley, president of the National Federation for People's Rule for manuscript copies of bills and laws before they were available in published form.

[2] South Dakota, Const. (amend. 1898), art. 3, sec. 1. Utah, Const. (amend. 1900), art. 6, secs. 1 and 22. Oregon, Const. (amend. 1902), art. 4, sec. 1. Nevada, Const. (amend. 1904), art. 19, secs. 1 and 2. Montana, Const. (amend. 1906), art. 5, sec. 1.

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provisions for securing the results which the amendments contemplated. The amendment for Utah was not made self-executing, and three successive legislatures have refused to provide for its operation. The amendment for Nevada provides only for the referendum, and the details of the plan are so imperfectly drawn that substantial results from the law are as yet "the substance of things hoped for" rather than the evidence of things seen. Among the earlier amendments the South Dakota provision adopted in 1898 and fortified by effective legislation in the following year has undoubtedly served as the best model for subsequent attempts to secure direct legislation in this country. This amendment is quite closely modeled after the plan so long in successful operation in Switzerland, and although an undue use of the emergency clause has somewhat weakened the efficiency of the system in South Dakota,[3] that State has secured fairly satisfactory results from the operation of her law. The lack of provision for bringing initiative measures before the legislature and for securing competing bills has been one of the serious defects of the Oregon law. Oregon voters have too often been placed at the disadvantage of choosing between the acts of groups of extremists, instead of having a choice of measures resulting from the deliberative attempts of men to find some common basis for legislative action. Prior to the legislation of 1907, the Oregon system also suffered from the lack of publicity for proposed measures. This defect is largely overcome by the new law ('07, c. 226) which makes elaborate provision for the publication and distribution of initiative bills, and of arguments to be submitted to the voters. However, the lack of opportunity for bringing proposed measures before the legislature and the impossibility of securing the submission of competing bills, lessens the guarantee for careful consideration of proposed legislation, and diminishes the voter's opportunity for discrimination and choice. The Montana amendment of 1906 introduced an innovation by requiring that two-fifths of the whole number of counties of the State must each furnish the required per cent of signers for the initiative and referendum petitions. This provision will probably make it more difficult to secure the required number of signatures, and the practical outcome of the plan will be awaited with interest by both advocates and opponents of direct legislation.

[3] See State ex rel. Lavin et al. v. Bacon et al., 1901, 14 S. D., 394.

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Although the amendments secured prior to 1907 show many defects, they have pointed the way for securing direct legislation in State affairs, and the experience gained through the practical application of the several laws is being utilized to establish more effective systems.

During the legislative sessions of 1907 the campaign for the initiative and referendum was carried on with unabated fervor. Measures providing for some form of direct legislation were introduced in some twenty States and the results secured during the legislative year have made the question one of political importance throughout the country. The legislatures of Maine, Missouri, and North Dakota provided for the submission of constitutional amendments. The amendments for Maine and Missouri will be voted upon in 1908, while in North Dakota the proposed amendment must also be passed by the next legislature before being submitted to the people. The provisions[4] for the initiative and referendum in the constitution recently adopted by the people of Oklahoma are of special interest. This constitution is the first in our country to embody the principles of direct State legislation in the original draft, all of our other constitutional provisions on this subject having been secured through amendment.

Briefly outlined the Oklahoma Constitution contains the following provisions for direct State legislation: The initiative and the referendum apply both to constitutional and to statutory law. Legislative measures may be proposed by 8 per cent, and amendments to the constitution by 15 per cent of the legal voters. The total number of votes cast at the last general election for the State office receiving the highest number of votes, is made the basis on which the required number of signatures is to be counted. A referendum may be ordered by 5 per cent of the legal voters, but laws necessary for the immediate preservation of the public peace, health, or safety are exempt from the referendum provisions. Referendum petitions are to be filed with the secretary of state not more than ninety days after the final adjournment of the legislature which passed the bill on which a referendum is demanded. All elections on measures referred to the people are to be had at the next general election held throughout the State, except when the legislature or the governor shall order a special election for the express

[4] Oklahoma, Const. 1907, art. 5, secs. 1–8; art. 18, sec. 4a–5b; and art. 24, sec. 3.

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purpose of making such reference. Initiative measures require a majority of the votes cast at the election, while only a majority of the votes cast on a referred measure are necessary to give it effect. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislature. The veto power of the governor does not extend to measures voted on by the people. Any measure rejected by the people through the powers of the initiative and referendum, cannot again be proposed by initiative within three years thereafter, by less than 25 per cent of the legal voters.

The proposed amendment for North Dakota is modeled more closely after the Swiss law, and has many points of advantage over the provisions in the Oklahoma Constitution which follows the Oregon amendment in a number of particulars. The North Dakota provision for bringing the initiative measures before the legislature and for securing the submission of competing bills is an especially strong feature. Under the North Dakota plan 8 per cent of the legal voters may propose a measure by initiative petition. Every such petition must include the full text of the measure proposed, and must be filed with the secretary of state not less than thirty days before any regular legislative session and he is required to transmit the same to the legislature as soon as it convenes. Initiative measures take precedence over all measures in the legislative assembly except appropriation bills, and are either to be enacted or rejected without change or amendment within forty days. Any initiative measure enacted by the legislature is subject to referendum petition or it may be referred by the legislature to the people for approval or rejection. If it is rejected, or no action is taken upon it by the legislature within forty days, the secretary of state is to submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure proposed by initiative petition and propose a different one to accomplish the same purpose, and in any such event both measures are to be submitted by the secretary of state to the people for approval or rejection at the next election. If conflicting measures submitted to the people at the same election are approved by a majority of the votes severally cast for and against the same, the one receiving the highest number of affirmative votes becomes valid and the other is thereby rejected.

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The North Dakota plan also makes provision against an undue use of the emergency clause by the legislature. When it is necessary for the immediate preservation of the public peace, health, or safety that a law shall become effective without delay, such necessity and the facts creating the same must be stated in one section of the bill. If, upon aye and no vote in each house, two-thirds of all the members elected to each house vote on a separate roll call in favor of the law going into instant operation, it becomes operative upon approval of the governor. The referendum may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety), as to any measure or any parts, items, or sections of any measure passed by the legislature either by a petition signed by 5 per cent of the legal voters, or by the legislature by a majority vote. The filing of referendum petition against one or more items, sections or parts of an act is not to delay the remainder of that act from becoming operative. Referendum petitions against measures passed by the legislature are to be filed with the secretary of state not more than ninety days after the final adjournment of the legislative session. The veto power of the government does not extend to measures referred to the people. All elections on measures referred to the people of the State are to be had at biennial regular general elections except as provision may be made by law for a special election or elections. Any measure referred to the people is to take effect when it is approved by a majority of the votes cast thereon, and is to be in force from the date of the official declaration of the vote. The whole number of votes cast for justices of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum is made the basis on which the number of legal voters necessary to sign such petition is to be counted. The amendment is self executing, but legislation may be enacted especially to facilitate its operation.

The amendment[5] submitted in Maine is similar in its most important points to that of South Dakota. Provision is made against an undue use of the emergency clause and also for securing the submission of competing bills from the legislature. A peculiarity of the Maine law is that it provides for a definite number, instead of a percentage of

[5] Maine, Resolves, 1907, c. 121.

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signatures to propose or refer measures; thus, it requires 12,000 signatures for initiative and 10,000 for referendum petitions. This is probably due to the fact that the legislature of Maine considered the population of the State a fairly fixed element. The amendment applies to statutory law, but it does not provide for changes in the constitution through initiative petitions.

The proposed amendment[6] for Missouri provides that laws and amendments to the constitution may be proposed by 8 per cent and the referendum may be invoked by 5 per cent of the legal voters. There is also a provision that the number of signatures required for initiatives and referendum petitions must be secured in each of at least two-thirds of the congressional districts in the State. The amendment does not apply to laws necessary for the immediate preservation of the public peace, health, or safety nor to laws making appropriations for the current expenses of the State government, for the maintenance of the State institutions, and for the support of the public schools. The lack of provision for bringing proposed measures before the legislature and for securing the submission of competing bills must be considered a weak point in the Missouri plan.

THE ADVISORY INITIATIVE AND ADVISORY REFERENDUM FOR STATE MEASURES

The difficulty of securing constitutional amendments for the initiative and the referendum have led to the development of other methods for securing at least partial systems of direct State legislation.

The Illinois public opinion system (Laws 1901, p. 198) adopted in 1901, provides for an expression of opinion by electors on questions of public policy at any general or special election. Under this law the submission of any question for an expression of public opinion may be secured, on a written petition signed by 25 per cent of the registered voters of any incorporated town, village, city, township, county, or school district; or by 10 per cent of the registered voters of the State. The petition must be filed with the proper election officers, in each case, not less than sixty days before the date of the election at which the question is to be considered, and not more than three propositions

[6] Missouri, Laws, 1907, p. 452–3.

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may be submitted at the same election. This law is a step toward the advisory initiative, but it does not go quite so far, as the voter merely expresses an opinion instead of being able to instruct his representatives by direct ballot. The public opinion system has been used in Illinois on a number of State questions, but as the candidates for the legislature were not pledged to obey the wishes of their constituents, these expressions of public opinion have not been very effective in securing the legislation desired.

A vigorous campaign for the advisory initiative and the advisory referendum was conducted in a number of States during the past legislative year. The question excited special interest in Massachusetts where a pledged majority of the legislature for the advisory initiative, broke their pledges by refusing to pass the proposed bill. Other States had similar experiences with representatives pledged to vote for the advisory system of direct legislation, although the plan continues to receive the approval of public men of all parties. In his last message to the Minnesota legislature, Governor Johnson called attention to the merits of this system and declared himself to be "firmly of the opinion that such legislation is desirable."

The Texas system (Laws 1905, c. 11, sec. 140) provides for the advisory initiative within the parties at primary elections. The law applies "whenever delegates are to be selected by any political party to any State or county convention, or candidates are instructed for, or nominated." Under this law, 10 per cent of the voters in any political party may propose policies and candidates and secure a direct party vote thereon. Petitions are to be filed with the chairman of the county or the precinct executive committee at least five days before the tickets are to be printed, and the chairman may require a sworn statement that the names of the applicants are genuine. The number of signatures necessary for a petition is to be determined by the votes cast for the party nominee for governor at the preceding election. It is made the duty of the chairman to submit any proposition for which a petition is filed, and the delegates selected at that time are to be considered instructed for whichever proposition a majority of the votes are cast. Provision is also made that all additional expenses of printing any proposition on the official primary ballot is to be paid for by the parties requesting the same.

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Advocates of direct legislation have recently been carrying on a campaign for the advisory initiative and advisory referendum for national affairs. One hundred and ten members of the present house of representatives are pledged to vote for the establishment of the advisory referendum for acts of congress or bills passed by either house, and for the establishment of the advisory initiative for the following topics: civil service; immigration; interstate commerce, including parcels post; trial by jury or any modification of the law of injunction; the eight hour day in government contract work; the initiative and referendum; the election of United States senators by the people; and proportional representation.

THE RECALL

The recall is another political institution developed in Switzerland, which is being established in this country in an increasing number of municipalities. At the present time it is in existence in a large number of cities[7] in California and in Washington. It is also to be found in certain cities in Idaho, Iowa, Michigan and Texas. The validity of the recall has been sustained in a number of court decisions.[8] Recently the California State appellate court of the second district held that

[7] Among the California cities which have secured the recall as a charter right are: Los Angles (Cal. Laws 1903, c. 6); San Diego (Cal. Laws 1905, c. 11); San Bernardino (Cal. Laws 1905, c. 15); Pasadena (Cal. Laws 1905, c. 20); Fresno (Cal. Laws 1905, c. 23); Santa Monica (Cal. Laws 1907, c. 6); Alameda (Cal. Laws 1907, c. 7); Long Beach (Cal. Laws 1907, c. 15); Riverside (Cal. Laws 1907, c. 25).

In Washington, Seattle secured the recall in 1906, and in 1907 the Spokane city council adopted an ordinance for the recall to be submitted to the people as a proposed amendment to the charter. Under c. 241, Laws 1907, provision is made for the recall in all cities of the second class. This includes cities having a population between 1500 and 10,000.

For Idaho, see Lewiston charter (Laws 1907, p. 349).

Des Moines adopted the recall under the Iowa Law (1907, c. 48) providing for the commission system of government.

In April, 1906, Grand Rapids, Mich., adopted the recall under the provisions of her new charter (Mich. Laws 1905, no. 593), establishing the initiative and referendum for charter amendments.

[8] Davenport v. City of Los Angeles, et al., 1905, 146 Cal., 508; Good v. Common Council of City of San Diego, 1907, 90, p. 44. (Cal. App.)

Also compare Rex v. Richardson, 1758, 1 Burr, 517, in which it was held that "the power to remove a corporate officer from his office for reasonable and just cause is one of the common law incidents of all corporations."

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the act of the city council in accepting the petition for the recall of a councilman was merely ministerial, and that when a petition bears the proper number of names of electors, as shown by the clerk's certificate, no discretion remains with the council, but it is its duty to call an election.[9]

A typical example of the recall for city officials is found in the new law (1907, c. 48) of Iowa, which provides for the adoption of the commission system of government by cities having a population of 25,000 or over. Section 18 provides that the holder of any elective office may be removed at any time by the electors qualified to vote for a successor of the incumbent. The procedure for removal is as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least 25 per cent of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, is to be filed with the city clerk. This petition is to contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer must add to his signature his place of residence, giving the street and number. One of the signers of each paper is to make oath before an officer competent to administer oaths that the statements therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing the petition the city clerk is to examine the voter's register to ascertain whether or not the petition is signed by the requisite number of qualified electors. If necessary, the council is to allow him extra help for that purpose; and he is to attach his certificate to the petition, showing the result of his examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of the certificate. Within ten days after such amendment, the clerk is to make like examination of the amended petition, and if his certificate shows the same to be insufficient it is to be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect.

[9] Good v. Common Council of the City of San Diego, 1907, 90, p. 44.

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If the petition is deemed to be sufficient, the clerk is to submit the same to the council without delay, and if it is found to be sufficient, the council is to order and fix a date for holding the election, not less than thirty days or more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed.

The council is to provide for publication of notice and all arrangements for holding the election, which is to be conducted and returned in all respects as other city elections. The successor of any officer so removed is to hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk is required to place his name on the official ballot without nomination. In any removal election, the candidate receiving the highest number of votes is to be declared elected. Unless the incumbent receives the highest number of votes at the election he is deemed to be removed from the office upon the qualification of his successor. In case the party who receives the highest number of votes fails to qualify, within ten days after receiving notification of election, the office is deemed vacant.

The new charter for Lewiston, Idaho (Laws 1907, p. 349) has similar provisions for the recall. In addition it safeguards the city from possible misuse of the law by providing that no petition for removal is to be filed until the person has been in office at least ninety days, and that no person is to be required to stand for reëlection more than once during the term for which he was elected.

JUDICIAL INTERPRETATION OF DIRECT LEGISLATION

The validity of legislation for the initiative and referendum has been sustained in a number of recent court decisions. The former contention that the use of direct legislation substituted a pure democracy for a republican form of government, no longer receives serious consideration.

In a case decided by the supreme court of California in 1906, the court declared[10] that the provision of the Federal Constitution (art. 4, sec. 4) declaring that the United States shall guarantee to every State a republican form of government, is not violated by the initiative

[10] In re Pfahler, 1906, 88, p. 270.

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provision of a city charter[11] authorizing direct legislation as to strictly local affairs by the citizens, in case the council refuses to enact the same. In an earlier decision[12] the supreme court of Oregon similarly held that the initiative and referendum amendment to the Oregon Constitution, did not abolish or destroy the republican form of government, or substitute another in its place. The court declared, "The representative character of the government still remains. The people have simply reserved to themselves a larger share of legislative power."

Madison defined a representative government to be "a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a given period or during good behaviour."[13]

Recent court decisions seem to be returning to this inclusive idea of representative government. On the basis of this broader interpretation, direct legislation may prove to become one method of making representative government more representative.

[11] Charter of Los Angeles, Cal. Laws 1903, c. 6.
[12] Kadderly v. Portland, 1903, 44 Or., 118.
[13] *The Federalist*, 302.

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PRIMARY ELECTIONS AND MAJORITY NOMINATIONS

CHARLES K. LUSH

The question of majority nominations in primary elections has been before the Wisconsin legislature during the last two sessions. (1905, Special Session, Bill 11A, and 1907, Bill 350A). Both times the proposition of securing majority nominations by means of the "second choice" has met defeat.

This is written with the hope of making plain the basic principle upon which the second choice amendment to the primary rests. It is the principle that the nominee of a political party should represent the party principles or policy of the majority of the voters of the party. It prevents the possibility of a man representing the principles of only one-fourth of the voting strength of the party being nominated as the candidate of the party, and in direct conflict with the views of three-fourths of the voters of the party. It was the recognition of this principle that caused the conventions to nominate by majority vote of the delegates instead of by plurality. The present Wisconsin primary law prevents a number of candidates representing the majority sentiment as to party principles from coming into the field as candidates for the nomination for fear the candidate of a minority may be named by receiving a higher vote than any one candidate among the majority candidates. The present primary is, in effect, a convention to which every voter is a delegate and in which the candidate receiving the most votes on the first ballot is the nominee. The remedy lies either in the adoption of the second choice amendment (derisively known as the Mary Ann law), or by return to the convention system.

An effort has been made to make it appear that the second choice system is very complicated. The voter casts one vote for a candidate as his first choice and another for the man whom he would like to see nominated if his first choice cannot be nominated. So far as the voter is concerned there is no "complication." Delegates who attend State conventions do not find it complicated to vote for their second choice after they find that their first choice can not be nominated.

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A diagram of the tally sheet, and of the checking and computing blank will make the second choice proposition clear.

BALLOT

FOR GOVERNOR	First Choice	Second Choice
Adams		
Brown	×	
Black		
White		
Gray		×

Following, is the official tally sheet upon which the first and second choice votes are entered, being called off in this case: "For governor, Brown first, Gray second." Supposing the ballots of one precinct have been called off, the sheet shows as follows:

OFFICIAL BALLOT SHEET

FOR GOVERNOR

First Choice	Second Choice				
	Adams	Brown	Black	White	Gray
Adams.....25			15	10	
Brown.....43	15		25		3
Black.....20		15		5	
White.....55	7	10	30		8
Gray.....17		15		2	

Carried down the first choice vote, or first ballot of the "convention" is as follows:

Adams 25
Brown 43
Black 20
White 55
Gray 17

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There being no majority on the count of first choice votes cast, and Gray being the lowest man, he is beaten and out of the race, so those who voted for Gray are entitled to have their votes counted for their second choice, making the result as follows:

Adams	25		
Brown	43	15	58
Black	20		
White	55	2	57

Black is now the low man, and the men who voted for him as their first choice are entitled to have their second choice votes counted for their second choice. Repeated as above brings the following result:

Adams	25		
Brown	58	15	73
White	57	5	62

There are now only Brown, White and Adams left, and Adams, being defeated and low man, his adherents are entitled to express a second choice and their votes are counted, making the final result as follows:

Brown	73	0	73
White	62	10	72

It will be seen by studying the above table that Brown made no gain on the final "ballot" for the reason that none of the 25 voters who voted for Adams for first choice voted for Brown for second choice. Ten of them, however, voted for White as their second choice while 15 of them voted for Black as their second choice. These 15 second choice votes are not counted for the reason that they were being counted for Adams while he was still in the race, and, before Adams was out of the race, Black was out of it. These voters simply voted for two losers. This explains why in the above showing between Brown and White their total vote is only 145, while there were 160 votes cast in all. But 15 of these votes were cast for Adams and Black, both of whom were low men—two losers.

This system does not always insure a majority of all votes cast, but it does insure the nomination of a candidate who represents the majority sentiment of the party as regards party principles. Let us illustrate by showing what can happen under the present law, where

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a first choice alone counts and the high man is nominated, all of the rest being "eliminated." To begin with, remember that the present primary is, in effect, a party convention to which all party voters are delegates entitled to one vote on the only "roll call" allowed. The man who receives the highest vote on this "first ballot" (the primary vote) is the nominee of the party.

Let us suppose there were three tariff reform republican candidates and one stand-pat republican candidate in a congressional district having 10,000 republican votes of which 7000 were tariff reform and 3000 stand-pat republicans. At the primary the result could reasonably be supposed to be as follows:

A—Stand-pat candidate.....3000
B—Tariff reform candidate.....2500
C—Tariff reform candidate.....2500
D—Tariff reform candidate.....2000

By this result, which is the present system of the highest candidate being the nominee, the stand-pat republican would become the nominee of the 7000 voters absolutely opposed to the policy advocated by him. Could anything be more absurd than this?

Now let us use this same case and apply the second choice rule by which the lowest candidate is "eliminated" and not all but the highest "eliminated"' which is the present primary law.

The first count of first choice votes would be as above given.

Each voter having expressed a second choice, and D, one of the tariff reform candidates, being the low man, he would be out of the race, so the voters who voted for him for first choice would be entitled to have their second choice votes counted. Now, would they not be sure to be divided between the two other tariff reform candidates—men who represented their views on party policy? Suppose they had divided, 1500 of these having been cast for B as their second choice, and 500 for C. The final result would be:

A—Stand-pat republican.....3000
B—Tariff reform republican.....4000
C—Tariff reform republican.....3000

B would accordingly be the candidate representing the views of 7000 voters, instead of A representing the tariff policy of only 3000 voters.

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Under the present nominating law it is necessary that the "boss," or leader, should "eliminate" the candidates of the majority before the primaries are held, otherwise the candidate of the minority would be the nominee of the party. Under the second choice feature, which was a part of the Australian law and left off by the drafters of the Wisconsin law, the voters do this "eliminating" at the primaries. Until this opportunity of selection is placed in the hands of the people there can be no true representative government.

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NOTES ON CURRENT LEGISLATION

MARGARET A. SCHAFFNER

Bucket Shops. Among the States which have enacted laws prohibiting bucket shops during the current year are: Indiana, Iowa, Maine, Massachusetts, Missouri and Nebraska.

The Massachusetts law (1907, c. 414) furnishes an elaborate definition in which "bucket-shopping" is declared to mean:

(*a*) "The making of, or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties thereto intend, or such keeper intends that such contract shall be or may be, terminated, closed or settled according to, or upon the basis of, the public market quotations of prices made on any board of trade or exchange upon which said securities or commodities are dealt in, and without a bona fide purchase or sale of the same; or

(*b*) "The making of, or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties intend, or such keeper intends, that such contract shall be, or may be, deemed terminated, closed or settled when such public market quotations of prices for the securities or commodities named in such contract shall reach a certain figure without a bona fide purchase or sale of the same; or

(*c*) "The making of, or offering to make any contract respecting the purchase or sale, either upon credit or upon margin, of any securities or commodities, wherein both parties do not intend, or such keeper does not intend, the actual or bona fide receipt or delivery of such securities or commodities, but do intend, or such keeper does intend, a settlement of such contract based upon the differences in such public market quotations of prices at which said securities or commodities are, or are asserted to be, bought and sold."

Having given this elaborate definition, the act proceeds to make bucket-shopping punishable by a fine not to exceed one thousand dollars or by imprisonment for not more than one year. A second offense is made punishable by imprisonment for not more than five years. Upon

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a second conviction a domestic corporation may be dissolved and a foreign corporation may be restrained from doing business in the Commonwealth.

The enforcement of the law is further facilitated by the provision which requires that "every person shall furnish, upon demand, to any customer or principal for whom such person has executed any order for the actual purchase or sale of any securities or commodities, either for immediate or future delivery, a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the fact may be, the time when, place where and the price at which the same was either bought or sold." Failure to comply with this requirement within twenty-four hours after demand constitutes prima facie evidence that such purchase or sale was "bucketing" or "bucket-shopping" within the terms of the act.

The Indiana, Maine and Iowa laws are practically identical, the only difference being in the penalty for violation. They define a bucket shop as an office or other place where the business of making transactions respecting the purchase of any stocks, grains, and other commodities is conducted in such a manner that both parties intend that the transactions shall be closed upon the basis of the market quotations of prices made upon any board of trade, upon which the commodities referred to in such transactions are dealt in, and without a bona fide transaction on such board of trade; or where both parties shall intend that such transaction may be terminated when the public market quotation of prices made on such board shall reach a certain figure; and also any office, where the proprietor makes transactions for the purchase or sale of any such commodities wherein the parties do not intend the actual receipt or delivery but intend a settlement based upon differences in prices at which the commodities are, or are claimed to be, bought or sold.

In Indiana (1907, c. 242) any corporation or person, whether acting individually or as a member, officer, agent, or employee of any corporation, association or copartnership who assists in keeping a bucket-shop, upon conviction, is to be fined not to exceed $1000 nor less than $500, or is to be imprisoned in the county jail until the fine is paid, not exceeding one year. For the second offense an addition of not less than sixty days or more than one year is made. Upon conviction in Maine (1907, c. 153) the fine is $3000 or imprisonment until the fine is paid, not exceeding one year. For the second offense, there is an addition to the above penalty imprisonment in the county jail for not less than sixty days nor more than one year. Iowa (1907, c. 175)

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makes violation a felony with a fine not to exceed $1000 or imprisonment in the penitentiary not to exceed two years and both penalties in case of second offense.

In all three laws if the violator is a corporation, it is liable to forfeiture of all its rights and privileges. Any corporation, association or person who communicates, receives, or exhibits, in any manner, any statements of quotations with a view to any prohibited transaction is deemed an accessory and is subject to the same punishment as the principal. Every commission merchant, etc., must upon demand, furnish the names of the parties from whom a commodity was purchased or to whom it was sold. A refusal to comply with this demand within twenty-four hours is prima facie evidence that the property was not bought or sold in a legitimate manner.

The Missouri law is different in form as well as more radical and far reaching in its scope, but the bucket shop is defined in substance the same as in the three above laws. The law begins by declaring the setting up of a bucket shop a felony. Transactions where there is no actual exchange of commodities for or on account of parties interested, are declared gambling and criminal acts whether the order or contract for the pretended purchase or sale purports to be offered, accepted, or executed in that State or any other State or country; provided the offer to make such pretended purchase or sale is given or communicated from that State. Telegraph and telephone companies are forbidden to transmit over their lines in the State any message or communication pertaining to pretended purchases or sales. Any person acting for such companies as operator, etc., who violates this provision is guilty of a felony. It is not necessary, in order to commit the offense defined in the act, that both buyer and seller agree to do any of the acts prohibited by the law, but the crime is complete against any person acting individually or as an officer, etc., pretending or offering to sell or buy whether the offer is accepted or not. Any person found guilty of a violation of the act is deemed guilty of a felony, and upon conviction is liable to imprisonment in the penitentiary for not less than two nor more than four years, or to imprisonment in the county jail for not less than six nor more than twelve months.

Under the Nebraska law (1907, c. 174) the penalty for keeping a bucket shop is a fine of not less than $100 nor more than $500, or imprisonment for not less than three nor more than six months or both fine and imprisonment in the discretion of the court.

MORRIS J. CASHEL.

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Charities and Corrections. In the general field of the care and custody of the juvenile wards of the State there are a number of enactments worthy of note in a review of the year's legislation.

In Illinois an act approved May 13 authorizes the establishment and maintenance by the county authorities of a detention home for the temporary care and custody of dependent, delinquent, and truant children. "As nearly as practicable for their safe custody, the inmates thereof shall be cared for as in a family home and public school." The electors of any county may adopt the act by a popular vote, and may similarly abandon the system. Another act (June 4) defines "dependent" and "neglected" children and "delinquents," sets forth the procedure by which such may be declared wards of the State "for the purposes of this act only," and provides that such children may be left at home under probationary guardianship or placed in the more direct institutional care of the State during minority. An extension of the juvenile probation system is provided for by an act (April 19) authorizing for all counties the payment of compensation to probation officers.

Indiana systematizes the public responsibility for the support of dependent and neglected children by an act (1907, c. 41) which defines the terms, declares that "the judge of the juvenile court in any county shall hear every case. . . . concerning a dependent or a neglected child" and may declare such child a public ward, and provides that "no child hereafter shall be supported, in whole or in part, in such institution (i. e., orphan's home or other children's institution), by a county, unless such child shall have been made a public ward by the order of the judge of the juvenile court." This places in the judge of the juvenile court an authority heretofore scattered in the hands of different public officers. Its effect will be watched with interest, in that "many persons believe that the larger proportion of children in this State who are public wards is due to the ease with which children can be turned over for support, thereby "enabling the relatives to escape their natural responsibilities." Willful neglect of parent or guardian leading to such dependence is punishable by fine and possible imprisonment, subject to suspension of sentence.

Important juvenile court acts are noted in Alabama, Michigan, and New Hampshire. The age of consent was raised in Indiana, New Hampshire, and South Dakota. Kansas provides for a special cottage for crippled children at the Soldiers' Orphans Home, while Minnesota passed an act (1907, c. 81) to establish a State hospital for indigent, crippled or deformed children.

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A number of States passed laws providing more severe punishment for crimes against children and for contributing to the delinquency of children. In the list are Connecticut, Illinois, Kansas, Michigan, Minnesota, Missouri and Indiana.

Several important measures relate to the State's care of its insane. In Illinois an act of June 4 provides for a districting of the State by the commissioners of public charities for the purpose of regulating the admission of patients. The act looks toward the transfer from the county asylums and almshouses to the State asylums of as many patients as can be accommodated and the gradual acceptance by the State of all responsibility for the care of the insane. Section 11 of the act says: "It is the intent and meaning of this act that when and after the State shall have been divided into districts as herein provided, and sufficient accommodations in State institutions shall have been provided for all the insane of all the counties of the State and certified as set forth in the seventh section of this act, no insane person shall be permitted to remain under county care, but that all the insane who are now or who may hereafter become a public charge shall be transferred to the respective State asylums without unnecessary delay, there to be regarded and known as the wards of the State and to be wholly supported by the State." And no insane person now or hereafter under State care is to be returned to the care of local authority.

North Carolina makes a specific appropriation of a half million dollars for the establishment of a separate colony for the care of all mental defectives. Minnesota (1907, c. 48) provides for detention hospitals at the State hospitals. Increased accommodations for insane are also provided for in Maine, New Hampshire and Wyoming. In Kansas, to quote the secretary of the board of control, "the charitable institutions were given liberal appropriations with which to provide additional room and enable them to care for all of the insane and feeble-minded of the State and do away entirely with the policy of county care."

In New York the establishment of the Eastern Custodial Asylum has been spoken of as perhaps the most important enactment of the session in the field of charity. This institution is designed to care for those incurable cases for which care and oversight represent all that can be done. Many persons can be cared for in such an asylum who are out of place in existing institutions and who occupy attentions which might better be given to those whose cases hold out a hope of cure.

In general the manual occupation of inmates of State institutions should be judged as a part of the corrective or curative work. Michigan

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and Minnesota offer enactments striving to solve the difficult problem of harmonizing such occupation with outside industrial conditions. Michigan establishes a binder-twine plant at the State Prison on State account, and the people by a large majority have repealed the constitutional provision forbidding the teaching of a mechanical trade to convicts. Minnesota (1907, c. 49) authorizes the board of control to establish at the State Prison, a factory for the manufacture of rakes, mowers, harvesters and binders. An act similar to that of Michigan in its essentials was passed in Indiana (1907, c. 86) establishing a binder-twine and cordage plant at the State Prison.

Two laws have been placed upon the statute books of Indiana, which have been described as "fairly epoch making." Says the *New Jersey Review* of these two acts: "The people of Indiana have had the courage to enact into statute law principles which only the most advanced penologists and social reformers have dared to advocate." Chapter 215 provides for the sterilization of confirmed criminals, idiots, imbeciles and rapists, "in cases that have been pronounced unimprovable." The decision is left to a committee of experts made up of the chief physician of the institution and two skilled surgeons of recognized ability together with the board of managers. Chapter 82 makes provision for the life imprisonment of habitual criminals, upon a third conviction for a felony. Section 2 of this act reads: "To authorize a sentence of imprisonment for life under this act, the indictment or affidavit shall allege that the defendant has been previously twice convicted, sentenced and imprisoned in some penal institution for felonies, describing each separately. If the trial jury in their verdict find these facts to be true and convict such defendant of the third felony, the trial court after passing sentence of imprisonment for a specific term as prescribed by the statute, shall proceed to sentence the defendant to imprisonment for his or her life."

Minnesota (1907, c. 441) has established a State board of visitors for public institutions, to consist of six members with the governor ex officio. Regular meetings shall be held, and the board "shall study the whole subject of the care and management of charitable and correctional institutions." The board or a committee of its members may be directed by the governor, at any time in his discretion, to investigate any penal or charitable institutions in the State, and for such purposes they may summon witnesses and demand books and papers.

Indiana (1907, c. 98) provides for a uniform system of control and management of State institutions. Boards of trustees are made each to

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consist of four members, no more than two from any party. Section 6 of this act contains several noteworthy provisions. After providing for the appointment by the boards of the chief administrative officers, the act goes on to say: "All other officers and employees of each institution named herein shall be appointed regardless of political or religious affiliation on the basis of fitness, after examination as to their qualifications for the duties to be performed under such rules and regulations as may be prescribed by the board of the institution." It is also made a misdemeanor "for any person to solicit or receive from any officer or employee of said institutions any money for campaign assessments, or for any officer or employee of said institutions to pay any such assessment to any person or organization or political party.

New York (1907, c. 430) has established a State probation commission of seven members. The work of the commission is largely supervisory and is expected to extend the operation of the probation system. Other enactments establishing or extending the system of probation and parole have been noted in Kansas, Missouri and Wyoming.

Statutes aimed against family desertion have been enacted in Maine, Michigan, New Hampshire and Indiana. The latter act (1907, c. 49) has received some criticism on account of a proviso "except for the cause of adultery or other vicious or immoral conduct," which is declared to involve danger in the trying out of divorce proceedings in the criminal trial.

CLARENCE B. LESTER.

Child Labor. At no time in the history of the country has the interest in the subject of child labor been greater than at the present. The labor union and statesman, as well as the philanthropist agree that reforms are needed.

Since January, 1907, sixteen States have passed laws in the interest of children, to protect them from excessive toil and to give them the rudiments of education. Few States have ideal laws, but in some the condition of the child is deplorable, and these States are taking steps to ameliorate the condition of the children. Florida, Idaho, Illinois Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, South Carolina, Tennessee, Vermont and Wyoming have passed laws in the interest of children this year.

In this legislation, the age limit varies from twelve in Florida, where the law provides for an age limit of twelve years for employment in any

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factory, work shop, bowling alley, bar-room, or in or about any mine or quarry, to eighteen in Massachusetts, where children under that age may not be employed in textile mills between 6 p. m. and 6 a. m.

Many of the States have included in the new laws a provision requiring some definite proof of the age of the child, thus preventing parents from making false statements. Idaho (Laws 1907, p. 248) requires an age certificate issued by a notary, certifying that the child can read and write English and has received instruction in spelling, English grammar and geography and is familiar with fundamental operations of arithmetic, or has similar attainments in another language. Maine, Missouri, Nebraska, and New Jersey require very definite proof of age, such as a certified copy of record of birth, baptismal record or passport. North Carolina, the State in which the condition of children laboring in the mills has been far from satisfactory, has been conservative in legislation. After January 1, 1908, children under thirteen, except as apprentices, are forbidden to be employed. The proof of age is simply the written statement of the parents. The hours of labor are not more than sixty-six in one week for all persons under eighteen, and after January 1, 1908, work is forbidden between 8 p.m. and 5 a. m. for all children under fourteen in the factories.

Certain States, such as Illinois, Michigan, Nebraska, Vermont and Wyoming have passed laws providing compulsory education. In Illinois (Laws 1907, p. 520) all children under sixteen, unless employed, are required to attend school. In Michigan all children between seven and sixteen, except children who have completed the eighth grade or children over fourteen who need to support their parents, are required to be in school during the entire school year. In the country districts of Nebraska (c. 66) children between seven and fifteen are required to attend school for two-thirds of the entire school session, and in no case less than twelve weeks. In the cities, the Nebraska law requires all children between seven and fifteen to attend school for the entire session, except those over fourteen employed for their support, or for the support of others dependent on them.

In the legislation of this year there is a decided tendency toward checking night work. Idaho, Minnesota, Missouri, Florida, Nebraska, New Jersey, New York, North Carolina, and Vermont have enacted laws to check or abolish this evil.

E. Watson Kenyon.

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Election Law, Austrian. A law of January 6, 1907, has altered in an important respect the Austrian fundamental law concerning imperial representation, substituting universal suffrage for a system of class representation. The important part of this law is that which amends section 7 of the fundamental law. The part of it relating to the electoral franchise reads as follows:

"Every male person who has attained the age of twenty-four years, who is not excluded from the right to vote by the provisions of the election law of the Reichsrat,[1] and who at the time the election is ordered, has resided for at least one year in the Austrian commune in which the right to vote is to be exercised, is qualified to vote for representatives."

An election law of the same date makes detailed provisions for the conduct of the elections under the new system; except in Galicia one representative is chosen in each election district; each commune forms a voting precinct. Elections under this law took place May 15 to 23. The new Reichsrat assembled on June 18.

Heretofore there have been five classes of electors: (1) The great land owners, comprising those who paid a certain land lax, varying in the several provinces from 50 to 250 florins; this class elected 85 representatives. (2) The cities, where the electoral franchise was extended to all males of the age of twenty-four who paid a direct tax of five florins; this class elected 99 representatives. (3) Chambers of commerce and of industry; this class alone elected 21 representatives, and together with the second class chose 19 others. (4) Rural communes, in which the qualifications for voting were the same as in the cities; this class elected 129 representatives. (5) A fifth class, created by law of June 14, 1896, included all males who had attained the age of twenty-four years, i. e., universal male suffrage prevailed in this class, which elected 72 representatives.

Under the class system of voting nearly one-half of the representatives were chosen by the Germans, who possess much the greater part of the wealth of the country, but form only a little more than one-third of the total population; by the new law the non-German populations for the first time control a decided majority of the house of representatives, the membership of which has been increased from 425 to 516. At the same time another constitutional amendment provided that the number of life members in the house of lords should not exceed 170 nor fall below 150. W. F. Dodd.

[1]These provisions relate to exclusion from the right to vote because of bankruptcy, conviction of crime, receipt of poor relief and certain other reasons.

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Free Public Employment Bureaus. The State of Minnesota, on April 13, 1907, enacted a law (1907, c. 180), which establishes a free public employment bureau in every city of 50,000 inhabitants, or over, and provides for the conduct and maintenance of the same. These employment offices are to be organized by the commissioner of labor in all cities of the required size. Any employer or any person seeking employment may apply to these bureaus, without paying a fee either directly or indirectly. The act further provides that the commissioner of labor shall appoint one superintendent for each bureau and that this superintendent may be removed by him for sufficient cause. These appointments are to be made immediately after the act becomes law and afterward at the commencement of the biennial sessions of the legislature.

The superintendents must keep a record of all persons applying for employment as well as the names and addresses of all persons, firms or corporations applying to employ labor and the character of employment desired or offered. Beside this, the superintendents must follow the directions of the commissioner of labor in the collection of labor statistics and in keeping of books and accounts and make monthly reports of all business transacted, to the office of the commissioner of labor, at the State capitol. Every application for employment by employer or employee, which is made to the free employment bureaus, is void after thirty days from its receipt, unless it is renewed by the applicant. If the applicant secures employment, he must notify the superintendent, within ten days, on a notification card provided for that purpose. If an applicant fails to do this, he may be debarred from future rights and privileges of the free employment bureau at the discretion of the commissioner of labor. An annual appropriation of $10,000 is provided to carry out the provisions of the act.

EDITH SHATTO.

Hours of Labor. A goodly number of laws limiting hours of labor were enacted during 1907. The employments in which hours were regulated include: the railway service, the selling of drugs, mining, and public works. Limitations imposed upon the hours of labor of women and children in certain industries were also enacted in a number of States.

The greatest number of laws relating to hours of labor were enacted to protect railroad employees and thus the public. The legislature of Oregon passed an act entitled "An act to protect the lives of the traveling public by limiting the hours of service of certain railway employees,

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and providing for them sufficient time to take rest, and providing a penalty for its violation." The law provides that any person who owns or operates a steam railroad which is located wholly or partly in the State shall not permit or require any conductor, engineer, fireman, brakeman, or flagman, who upon arrival at a terminal station, has been ten or more consecutive hours on duty, to again go on duty until he has had at least ten hours off duty. No conductor, engineer, fireman, brakeman switchman, flagman, or telegraph operator is to be permitted or required to remain on duty more than fourteen consecutive hours, except when longer consecutive service becomes necessary because of fires or wrecks or washouts or other unavoidable delays or unforeseen emergencies. The penalty for violation is a fine of not less than $100 and not more than $500, or imprisonment for not less than six months and not more than one year or both. The Indiana and the Kansas legislatures passed very similar laws providing that no conductor, engineer, fireman, brakeman, train dispatcher, telegraph operator, or any trainman who has worked sixteen consecutive hours shall go on duty without having had at least eight hours rest. The penalty for violation of the act is a fine of $100 to $200 in Kansas and from $100 to $500 in Indiana. Wisconsin, South Dakota, Washington, and Iowa passed laws providing that certain railroad employees shall not be on duty more than sixteen consecutive hours without having at least ten consecutive hours of rest, or if they have been on duty sixteen hours in the aggregate in any twenty-four hour period to continue on duty or go again on duty without having had at least eight hours off without duty within such twenty-four hour period. In Washington, South Dakota, and Wisconsin the penalty for violation is a fine of from $100 to $1000. In Iowa the penalty is a fine of from $100 to $500. The Wisconsin legislature passed a second law limiting the hours of labor of telegraph operators and train dispatchers to eight consecutive hours, with the provision that they shall not again go on duty until they have had at least eight hours' rest. The penalty for violation is a fine of from $1000 to $5000. Nevada also limits the hours of the block system operators on any railroad operating in the State to eight hours duty in one day with a fine of $100 for each violation of the act. Missouri, West Virginia, and North Carolina provide an eight hour day for telegraph operators and train dispatchers. North Carolina also provides a sixteen hour day for conductors, flagmen, engineers, brakemen, firemen, or members of train crews, on railroads in that State.

California passed a law (1907, c. 224) entitled, "An act to regulate

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the work and hours of employees engaged in selling at retail, drugs and medicines and compounding physicians' prescriptions and providing a penalty for the violation thereof." Section 2 of the law says: "As a measure for the protection of public health, no person employed by any person, firm or corporation, shall for more than an average of ten hours a day or sixty hours a week of six consecutive calendar days, perform the work of selling drugs or other medicines, or compounding physicians' prescriptions, in any store, establishment or place of business, where and in which drugs or medicines are sold at retail, and where and in which physicians' prescriptions are compounded; provided that the answering of and attending to emergency calls shall not be construed as a violation of this act. The law also provides that no person, firm, or corporation shall employ persons to perform such work for more than the prescribed time. The penalty for violation is a fine of not less than $20 and not more than $50 or imprisonment not exceeding sixty days or both. The commissioner of the State bureau of labor statistics is empowered to enforce the provisions of the act.

Oregon passed an act to limit the hours constituting a day's work for certain laborers and mechanics employed by the State of Oregon or by any county of the State.

A number of States enacted new or modified old legislation limiting the hours of labor of women and children. Oregon passed a law which provides that females shall not be employed longer than ten hours during any one day in any mechanical or mercantile establishment, laundry, hotel, or restaurant. They may work ten hours at any time, and in retail stores, for one week before Christmas, they may work not to exceed twelve hours. The penalty for violation is a fine of not less than $25 and not more than $100. California passed a law making it unlawful for any minor under the age of sixteen years, to work in any mercantile institution, office, laundry, manufacturing establishment, or workshop between the hours of 10 o'clock in the evening and 6 o'clock in the morning. Idaho makes it unlawful for any child under fourteen to be employed while public schools are in session or between the hours of 6 o'clock in the morning and 9 o'clock in the evening, also no person under sixteen years of age may work at a gainful occupation more than fifty-four hours in any one week or more than nine hours in any one day or between 6 o'clock in the morning and 9 o'clock in the evening. Missouri limits the hours of the labor of children to fifty-four in any one week or nine in one day or before the hour of seven in the morning and after the hour of seven in the evening. A North Carolina law makes sixty-six

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hours in a week the legal time for all children in manufacturing establishments; and after 1907 no boy or girl under fourteen years of age shall work in a factory between the hours of 8 p.m. and 5 a.m. The Tennessee legislature passed a law providing that after January 1, 1908, no woman or child under sixteen should work more than sixty-two hours in a week; after January 1, 1909, they are to work only sixty-one hours in a week and after January 1, 1910, only sixty hours in a week.

Hours of labor in mines were regulated in a group of Western States. A law passed in Oregon to regulate the hours of employment of persons engaged in working in any underground mines provides that eight consecutive hours in any twenty-four excluding the hours for lunch or meals, be a day's work. This does not apply in cases of emergency or to mines in the first stages of development. The penalty for violation is a fine of not less than $50 or more than $300 or imprisonment of not less than thirty days or not more than three months, or both. Idaho and Montana also fix eight hours as a legal day's work for such employment and also for persons working in smelters and all other institutions for the reduction and refining of ores or metals; Montana adds also all works or undertakings carried on or aided by municipal, county, or State government. The penalty for violation in Idaho is a fine of not less than $50 and not more than $300 or imprisonment of not more than six months or both; in Montana it is a fine of not less than $100 and not more than $500 or imprisonment of not less than thirty days or not more than six months, or both.

EDITH SHATTO.

Initiative and Referendum. In 1905, the people of Montana succeeded in getting the State legislature to submit to a popular vote, a constitutional amendment, providing for the initiative and referendum. At the ensuing election the amendment was adopted by an overwhelming majority, the vote being 36,374 in favor and 6616 against. This amendment was made effective during the 1907 session of the legislature by an act providing for the forms of initiative and referendum petitions, procedure, ballot, penalty, etc. It was also supplemented by an act providing for the initiative and referendum in towns and cities. Both went into effect in March, 1907.

Measures necessary for the immediate preservation of the public peace, health, or safety are exempt from the provisions of the law, nor may the people initiate or refer measures providing for appropriations, for the submission of constitutional amendments, or for local or special laws enumerated in art. 5, sec. 26 of the Constitution.

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The State initiative provides that measures may be proposed by 8 per cent of the qualified electors of the State as determined by the vote for governor at the preceding election. The petition for the initiative must be filed with the secretary of state not less than four months before the election at which it is to be voted upon. One peculiarity of the Montana initiative is that two-fifths of the counties of the State must each furnish 8 per cent of the qualified electors of such county as signers of the petition. This is somewhat similar to the Missouri law which requires a certain percentage from each congressional district.

The State referendum may be invoked by 5 per cent of the qualified electors of the State. The percentage is determined, as in case of the initiative, by the vote for governor at the preceding election and a similar requirement is made in respect to percentages in two-fifths of the counties of the State. The petition calling for a referendum must be filed with the secretary of state within six months after the adjournment of the legislature which passed the law upon which the referendum is desired. The law also provides that a measure passed by the State legislature shall not be delayed from going into effect unless the petition calling for a referendum shall contain the signatures of 15 per cent of the qualified voters of the State in which case the law is inoperative until passed upon at an election. This requirement, in view of the trouble South Dakota has lately experienced in the "holding up" of her 1907 divorce law, appears to be of merit. In South Dakota it was found rather easy to get the required 5 per cent of signers to hold up a meritorious piece of legislation, even though public sentiment was against such action.

Montana's municipal initiative provides that ordinances, laws or resolutions may be proposed by 8 per cent of the qualified electors of a municipality. The council must take action upon such petition within sixty days and the proposed measure must be submitted to a popular vote at the next election. A special election may be called however by the petitioning of 15 per cent of the qualified electors of the city or by action of the council. The municipal law further provides that no ordinance, law, or resolution, except appropriations and emergency measures, shall go into effect until thirty days after passage. It provides that the council may submit amendments to measures proposed by the people and that the courts, upon suit being brought against council, shall decide whether such amendments shall stand.

The municipal referendum may be invoked by 5 per cent of the qualified electors of the municipality and it requires the signatures of 15

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per cent to call a special election. The petition calling for such referendum must be filed with the city clerk within thirty days after the measure was passed by the city council.

AMBROSE B. BLAKE.

Liquor Legislation. A complete review of the liquor legislation enacted during the past year would cover a wide range of topics. Each State deals with the liquor problem in a way suited to its own conditions, hence we have as many different methods as there are States and territories. In each State and territory many questions of administration and enforcement arise each year, so that the volume of this kind of legislation becomes very large.

The main activity of the year has been in the direction of State prohibition for entire States and for specified localities; local option; and a combination of the dispensary system with local option.

State prohibition has been the classic method of dealing with the liquor problem and several States have tried the experiment. It has not always proved successful for the reason that the efficient enforcement of a moral law in any community depends upon the attitude of the people of that community toward it. No adequate provision for enforcement by State authority having been made, these laws were not strictly enforced in certain localities. As a result, local option has found favor and has largely superseded State prohibition throughout the country. This year, however, there has been a tendency toward prohibition. The Georgia legislature recently enacted a prohibition law for the entire State to take the place of the county local option law, although under the operation of the latter, the larger part of the State was "dry." Oklahoma, also, through its new constitution prohibited the manufacture and sale of liquor.

Local option has been extended to several States in addition to those already under that form of regulation. The Illinois legislature enacted a township and city local option law after a hard fought contest in which the friends of liquor secured a partial victory by eliminating the county, ward, precinct, and combination ward or precinct features of the proposed measure. Under the measure as first proposed, liquor licenses might be prohibited in any locality in various ways; first, by precincts or combination of precincts voting "no license," second, by wards or combinations of wards voting "no license," third, by the same action by townships or cities and, lastly, by counties. Colorado also joined the "local option" States, by the adoption of county and township local

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option. South Carolina abolished the State dispensary and provided for local option on county dispensaries. This law being a distinctly new departure in liquor legislation will be described at some length in a later paragraph.

Another form of local option, "the residence district remonstrance plan," which has been tried in Ohio, was adopted in Wisconsin at the last session. A similar measure was defeated at the session of 1905 and in New York also a similar measure was defeated in the sessions of 1906 and 1907. The law provides in brief, that wherever a majority of the legal voters of any residence district, which is defined as any compact contiguous territory bounded by streets, alleys, watercourses, or public ways, being not more in length than four times its narrowest width, and containing not less than one hundred and not more than seven hundred and fifty legal voters, shall sign a remonstrance against the granting of any liquor license in that territory, and file the same with the proper clerk, no license shall be granted within that territory until such time as a majority shall sign a petition of consent for such license. In determining a residence district, no street shall be included, on which one-third or more of the street frontage is devoted to commercial purposes. The residence district thus formed must remain intact and no part of the district shall be used to form another residence district while the original residence district exists. The same law also limits the number of saloon licenses which may be granted in proportion to the number of inhabitants.

Growing out of the enforcement of the liquor laws in local option territory, there arises the question of importation of liquor from saloon territory. Massachusetts has attempted to meet this problem by prohibiting any but express companies, railroads, and street railroads to transport liquors into anti-saloon territory and requiring those carriers which are permitted to transport liquors to see that the contents are properly labeled and that the name of the consignee is upon the package. Iowa places a heavy tax upon warehousemen who hold liquors and collect money on pretended sales. Indiana makes C. O. D. shipments into "no license territory" a violation of the law against selling, by declaring that such transactions constitute a sale within territory in which sales are prohibited. Whether as an attack upon railroads or as an attempt to regulate the liquor traffic and incidentally secure revenue, several States have passed laws requiring railroad companies to take out a license for selling or serving liquors on trains. Washington, New Mexico, Texas and Indiana are among the number. Missouri attacks

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another evil of the liquor traffic by prohibiting the granting of a license to anyone engaged in the manufacture of liquor. Several States passed laws prohibiting the sale of liquor within specified distances of schools, colleges, churches, and army posts. Oregon, Missouri, Illinois and Wisconsin passed this kind of prohibition.

But by far the most distinctly new liquor legislation of the year is the South Carolina county option dispensary law. This State experimented for a number of years with the system of a State dispensary under which the entire liquor traffic was in the hands of the State. The new law abolishes the State dispensary but not the dispensary idea. It combines the feature of local option with a system of county dispensaries, partially under State control. Each county may determine, not oftener than once in four years whether liquor shall be sold in the county and if the decision is in favor of sale, the governor, upon the recommendation of certain local authorities appoints three electors of the county to constitute the "County Dispensary Board." This board may establish dispensaries in incorporated towns and cities, appoint dispensers for one year, contract for a supply of liquors, test the purity of liquors, and in general control the conduct of the business. Sales must be made in quantities not less than one-half pint and no liquors are allowed to be drunk on the premises. The profits of the business are divided; one-third going to the county, one-third to the municipality, and one-third to the school or road fund, as the electors determine. The law is carefully detailed to make it effective in operation. It will be likely to remedy many of the faults of the State dispensary law which it supersedes.

JOHN A. LAPP.

Mortgage Taxation. Numerous measures were introduced in the legislatures of the several States during the 1907 sessions relating to mortgage taxation, but very few of them were adopted. The most important legislation was passed in California, Washington and Minnesota. California passed a resolution submitting to the people of the State a constitutional amendment looking toward a repeal of her present system of taxing mortgages. Washington has exempted mortgages and all credits for the purchase of real estate since 1893 (c. 124), but in 1907 the legislature went further and exempted all mortgages. In Minnesota, previous to the enactment of the present law mortgages were taxed as personal property to the owner at his place of residence, but the law was not enforced and in 1906 the constitution was amended and a way

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thus made clear for the introduction of a new system. In 1907 a new law was passed (c. 328) taxing mortgages by the same method as they are taxed in New York at the present time, that is, by a recording tax of 50 cents on every $100.

Perhaps no State in the Union is more interesting than California when the question of mortgage taxation is considered. Maryland, Connecticut, Michigan and several other States have long and interesting histories, but they are all surpassed by California for in that State the legislatures and the courts have struggled with the problem ever since the State has had legislative and judicial bodies within its borders. California has taxed mortgages as personal property, has exempted them entirely, and has taxed them as an interest in the mortgaged premises. The remnant of the law as it stands today was enacted in 1879 and made a part of the constitution; it provided that mortgages were to be taxed as an interest in the real estate and each party to the mortgage was to pay his share; the mortgagor could not contract with the mortgagee to pay the taxes on both interests and thus relieve the creditor entirely. This question was carried to the courts, and after much litigation a decision was handed down to the effect that an allegation and finding which did not state that the agreement of the mortgagor to pay the taxes was part of the mortgage contract, was not broad enough to establish an agreement violative of the constitution (London and the San Francisco Bank v. Bandman, 120 Cal., 220, 1898). This decision practically annulled section 5 of article xiii of the constitution which stated that contracts providing for the payment of the taxes on the mortgage by the debtor should be null and void. The actual repeal of this section, however, did not take place until November, 1906, when the question was voted on by the people. This leaves but one section of the California Constitution relating to the taxation of mortgages, and even now, the first necessary step has been taken looking toward its repeal. In 1907 the legislature passed a resolution submitting the question to a vote of the people.

The section under consideration reads as follows: "A mortgage, deed of trust, contract, or other obligation by which a debt is secured shall, for the purpose of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debt so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be

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assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situated. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment, a full discharge thereof" (sec. 4, art. xiii).

The California law has never been a success and if this section of the constitution is repealed by a vote of the people at the next general election it will mean that the California system of taxing mortgages has been abandoned either as a failure or in the hope of finding a plan less restrictive and more satisfactory to all interests concerned.

Washington has joined Idaho and exempted all mortgages from taxation. In 1893 (c. 124) the legislature passed a law stating that mortgages and all credits for the purchase of real estate should not be considered as property for the purposes of taxation. The 1907 session went beyond this and not only exempted all mortgages whether purchase money mortgages or not, but also all notes, accounts, moneys, certificates of deposit, tax certificates, judgments, State, county, municipal, and school district bonds and warrants. The bill was vetoed by the governor but passed by the legislature over his veto.

The law as passed in Minnesota applies to all mortgages except correction mortgages and mortgages taken in good faith by persons or corporations whose personal property is expressly exempted from taxation or is taxed upon the basis of gross earnings, or some similar methods of commutation. The tax imposed amounts to 50 cents on each $100 or major fraction of the principal debt or obligation secured. This is the only tax levied on the mortgage and is paid to the treasurer of the county where the whole or part of the mortgaged land is situated. In the case of trust deeds given to secure the issue of bonds a statement may be incorporated showing the amount of obligations already issued or to be issued. The tax is then computed on this amount and no obligations issued in excess are to be valid unless the additional tax has been paid. No mortgage, foreclosure, assignment, or satisfaction is to be recorded after April 30, 1907, or received in evidence in any court or have any validity as notice until all of the provisions of this act have been complied with. Mortgages recorded prior to April 30 may be taxed under the provisions of the new law if the owner wishes to pay the recording tax and have them exempt as personal property. The funds derived

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from this source are appropriated and distributed in the same manner as real estate taxes paid upon the real estate described in the mortgage.

This legislation does not show any special tendency in mortgage taxation. California has only cleared the way for a repeal of her present law. Washington has exempted mortgages entirely and Minnesota has adopted the recording tax system as it prevails in New York.

ROBERT ARGYLL CAMPBELL.

Municipal Public Utilities and Constitutional Limitations on Municipal Indebtedness. Wisconsin in common with many other States has a constitutional provision that no municipality shall incur indebtedness to an amount exceeding 5 per centum on the value of the taxable property therein. More than one city desiring to establish municipal public utility plants has been halted by this provision. Hence the Wisconsin legislature like the legislatures of other States has been struggling to devise a system by which money may be secured by the municipality and devoted to the purchase of a public utility plant without the creation of a municipal indebtedness. The latest attempted solution of this problem is chapter 665 of the laws of 1907.

Under the provision of this chapter mortgage certificates are issued which recite on their face that they "are secured by trust deed or mortgage upon the plant . . . . acquired or constructed and that no municipal liability is created thereby." The certificates are to bear interest at the rate of not more than 6 per cent, must not be sold for less than par, and are made payable at the option of the city within not less than five nor more than twenty years from date. To secure their payment a trust deed or mortgage is executed upon the plant.

This instrument must provide: (1) that the lien of such deed or mortgage upon the plant and upon the income therefrom shall be the only security which the holder of the certificates shall have and that neither the trust deed or mortgage or the certificates shall create any municipal liability; (2) that the income derived from the operation of the plant over and above the necessary expenses and repairs shall be kept in a separate fund out of which the interest on the certificates shall be paid; (3) that out of the excess an amount not less than 4 per centum of the face of the certificates shall be annually set aside as a sinking fund and that the income in excess of such running expense, repairs, interest and sinking funds may be used for extensions and improvements; (4) that if any interest shall remain unpaid for twelve months after due or if any of the principal shall not be paid when due the

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mortgage or trust deed may be foreclosed and that upon default in any interest or principal the holders of the certificates may declare the whole amount due and payable.

The law also provides for a reissue of certificates to take up previously issued and matured certificates.

The principle involved is not entirely new in Wisconsin legislation. Chapter 348, laws of 1899, amended by chapter 143, laws of 1901, contains similar provision but was applicable to only certain classes of cities. The supreme court has never passed upon the constitutionality of any of these laws.

It is to be noted that the law makes no provision that the purchaser at a foreclosure sale upon the plant may continue to operate it either under franchise or otherwise. The query presents itself whether the physical property constituting the plant without the right to continue operation of the plant will appeal to investors as good security for the large loans that will be necessary. It is to be remembered in this connection however that the granting of franchises has been placed by recent legislation in the hands of the State railroad commission and investors will have less fear than formerly of an arbitrary refusal to grant a franchise.

MATTHEW S. DUDGEON.

Railroad Taxation. The legislature of Maine of the current year has followed the example set by New Jersey in 1906, by adopting a graduated railroad tax. This tax is a specific State tax. It is based on the gross mileage receipts, and is to apply on a graduated scale increasing as the gross income per mile increases. When such receipts do not exceed $1500 the tax is to equal one-half per cent of the gross transportation receipts; when over $1500 and under $2000, three-fourths per cent, and so on increasing the rate one-fourth per cent for each additional $500 of gross receipts per mile, providing that in no case is the rate to exceed 4½ per cent.

New Jersey and Maine furnish the only precedents thus far for this method of railroad taxation. During the regular sessions of 1907, no less than nine State legislatures discussed a change in their present method of taxing railroads. However Maine was the only State to take advanced ground in the matter.

Legislatures are at great variance as to what is the best method of taxing railroads in order to promote that equality and justice which the constitution guarantees. The majority of States, however, maintain

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the integrity of basing their tax on the unit system of valuation, which the inter-state commerce commission, in its report of 1901, recommended as the best method in practice at that time. The courts are generally in accord, in saying that every railroad system is a unit, absolutely indivisible, for the purpose of determining the value of the parts, and that the aggregate of such values makes the value of the whole. (Chamberlain v. Walter, 1894, 60 Fed. 788.)

ARTHUR H. ROBERTSON.

Stock Watering. An act aimed at stock watering was passed at the last session of the Iowa legislature.

Corporations for pecuniary profit, except building and loan associations are forbidden (1907, c. 71) to issue any capital stock until the par value thereof has been received. If it is proposed to receive pay for stock in property or in any other thing than money, the corporation proposing such issue must apply to the State executive council for leave to do so. The application must state the amount of capital stock proposed to be thus issued, and must set forth specifically the property or other thing to be received in payment. The executive council is thereupon required to make investigation and to fix the value at which the corporation may receive the property or other thing in payment for capital stock. The corporation is also required to file a sworn certificate with the secretary of state within ten days after the issuance of any capital stock, stating the date of issue, the amount issued, the sum received therefor, if payment be made in money, or the property or thing taken, if such be the method of payment. Capital stock issued in violation of these provisions is void, and any money or thing of value received therefor is to remain the property of the corporation for the benefit of the remaining stockholders. Further penalties imposed for violation include dissolution of the offending corporation, and both fine and imprisonment for any offending officer, agent, or representative.

FRANK MCDERMOTT.

Trade Unions and Trade Disputes. The socialists introduced into the last Wisconsin legislature a bill (82A) copied after the British trade disputes act enacted by parliament in December, 1906.

The bill is almost an exact copy of the British law. It authorizes peaceful picketing by declaring that any person or number of persons may peacefully patrol the premises under strike (1) for the purpose of peacefully obtaining or communicating information, (2) for the pur-

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pose of peacefully persuading any person to work or to abstain from working. Theoretically the laborer is already in possession of this right, but certain judicial constructions of such words as intimidation, coercion, and force have so frequently deprived workmen of rights freely exercised by others that they desire a clear expression of the law on this point. The bill also calls for the repeal of the law of conspiracy. The conspiracy clause is similar to the statute of Maryland and of other States on this subject. It provides that an act done in the performance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act if done without any such agreement or combination would be actionable. Before the committee on manufactures and labor to which the bill was referred, the Wisconsin trade unionists argued that they should have the right to do in concert that which they are permitted to do as individuals. The bill further seeks to place trade unions upon the same footing as other associations in regard to civil as well as criminal liability by providing that while trade unions may be held responsible in contract they may not be sued in tort for acts done in furtherance of a trade dispute.

The bill was drawn after the British model and had it been introduced by any other than the socialist party it might not have met with defeat in the Wisconsin legislature. Taken separately most of the provisions of the bill are already in force in different States in this country.

GERHARD A. GESELL.

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BOOK REVIEWS

The Political Thought of Plato and Aristotle. By E. BARKER, M.A., late Fellow of Merton College, Oxford. (London: Methuen and Company; New York: G. P. Putnam's Sons. 1906. Pp. xxii, 559.)

This work, as the preface tells us, is not confined in its scope to a mere exposition of the political thought of Plato and Aristotle as it may be deduced from their writings. Beginning, as Mr. Barker says of the work, some seven years ago as an introduction to Aristotle's *Politics*, it soon became evident that the *Politics* was not to be comprehended without a knowledge of Plato, and so an introduction to an introduction became necessary.

In dealing in turn with Plato, the same necessity confronted the author, so that to quote his words "the result was inevitable, that I should, as Aristotle himself would say, 'begin from the beginning,' and in defiance of Horace, commence my tale *gemino ab ovo*" (p. v).

Accordingly, after an introductory chapter dealing with some general considerations regarding the origin of political thought in Greece, the Greek idea of the State, the relation of politics and ethics in the Greek mind, and the position of Athens and Sparta as opposing types, we find a chapter dealing with the Pre-Socratics, Socrates and the Minor Socratics. Then follow three chapters on Plato, in the first of which we are given a sketch of his life and his method, and a discussion of the earlier dialogues; in the second, a treatment of the republic or concerning justice; and in the third, Plato's view of monarchy and of the mixed State.

The remaining chapters, seven in number, are devoted to Aristotle and bear the following titles: Aristotle—His Life and Times; the Place of the Politics in his System; the Teleological View of the State; the State as a Compound; Aristotle's Conception of Law and Justice; Aristotle's Principles of Economics; the Ideal State and its Scheme of Education; Actual States and the Lines of their Reform.

The book closes with an epilogue; The Later History of the Politics, for, says Mr. Barker, "Finally, reflecting on the later history of Aristotle, *maestro di color che sanno*, and on his influence during the

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Middle Ages, I could not refrain myself from touching upon Aquinas and Marsilio or from treating of the times of contempt of Aristotle" (p. v–vi).

Two appendices have been added, the first touching upon a newspaper, entitled Observations on the Politics, which appeared under the Commonwealth; the second giving briefly the later history of the republic.

The author not only has set for himself the very difficult task of an exposition of the political thought of Plato and Aristotle, with its relations both to its predecessors and to its successors, but also, to quote again his own words, has "attempted to discuss the value of those conceptions today, and the extent to which they can be applied to modern politics" (p. vi).

The form in which the book is written, namely, a succession of chapters, each containing an analysis of an appropriate part of some one of the political writings of the authors under consideration, tends to give a mechanical impression, which palls upon the reader before the end is reached; yet it is perhaps as complete and thorough an analysis of the political writings of Plato and Aristotle as we have. No history of political theories can compare to it in elaborateness of treatment; and by reason of the introduction and the epilogue it might almost be called a history of Greek political theories and their influence.

The epilogue is far from being the least interesting portion of the book, for in it we have sketched, all too briefly it is true, yet with considerable acumen, the course this Greek political thought took; first in the hands of the Greek, then of the Roman stoics, the ideas of the world empire and the world church and the complete change in the conception of the nature of the State brought about by the doctrine of the church fathers, which saw in the State only the evil result of the fall of man; the influence exerted by Aristotle upon Thomas Aquinas, Hooker, Locke and Rousseau, resulting in "a theory of original contract, utterly different from itself and bitterly hostile to its own teaching" (p. 509).

Turning from Aquinas to Dante, we find an equally strong influence but very different in character. Beginning as Ghibelline in Dante, in Marsilio of Padua it advocates the complete subordination of the spiritual to the temporal power and in Machiavelli, results in that separation of ethics and politics, which may be regarded as the starting point of modern political science.

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But Machiavelli is not slavishly Aristotelian and Spinoza and Hobbes reject him altogether. A number of causes contributed to the desertion of Aristotle and ethics by political science, and it was only with the reaction against the mechanical conception of the world, typified in Rousseau, that there was a possibility of return to the Greek conception of the State as a moral being. With Hegel "political science definitely returns to its old ethical connection." "In Hegel political science is speaking once more in its native tongue. Once more it speaks, as it were, in Greek; once more it expresses itself in terms of ethics" (p. 522).

In the matter of detail, it may be remarked with satisfaction that the typographical work is almost flawless; the more noticeable for that reason is the omission of "no" from line 12, p. 319. The author is speaking of the English government and the principle by which it is to be classified. "But by which shall we classify—crown, parliament, cabinet, or electorate? Here, there is [no] such simple issue as confronted Aristotle; and the answer is not easy"—not alone for the omission of "no," but for the far more serious failure to give a satisfactory answer to this difficult question, do we feel inclined to find fault. After a few remarks about the electorate as the determinant, Mr. Baker says; "One is almost driven to say that there is no absolute standard of classification, and that England can only be classified according to several standards as a State with a large measure of local government, and with a central government conventionally composed of king and parliament, but really of an oligarchical cabinet constituted by a democratic electorate." Such classification is merely a description and utterly without worth as a scientific conception; nor can we so easily be brought to believe that the English government is of such a unique character as to defy classification.

The reader will doubtless be inclined to disagree with some of the conclusions arrived at by the author as a result of his attempts to determine the extent to which the Platonic and Aristotelian conceptions may be applied to modern politics and with some of his *dicta* regarding modern political thought. Particularly will this be the case if the reader is not inclined to subscribe to the conception of political science embodied in T. H. Green's *Principles of Political Obligation,* which the author states he has taken as his standard for contrast and comparison. For example, he says (p. 157), that "the application of the category of organism to the State is necessary and

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true. It is necessary, because it gives a true idea of the kind of unity which exists in the State; it is necessary, because it is an antidote to a false idea of the unity of the State, as legal in its essence, and contractual in its form." It is well and good to war on the notion of the State as a legal institution based on contract; there are few that will quarrel with such a course now that natural law and natural rights are so thoroughly discredited.

It is, however, to be questioned very seriously whether even greater harm will not arise through the antidote than the poison; the remedy prove worse than the disease. In a note on p. 158 Mr. Barker recognizes the failure of the organic concept in that it omits "conscious" action. The inherent tendency—and its danger—to convert an analogy into a reality, to accept the word for the thing, is illustrated by that very large number of writers of recent years who have seized upon the biological concepts of organ and organism and applied them unrestrainedly to any and all kinds of social and political phenomena which they were not able otherwise to explain; not understanding either the phenomena to be explained or the means by which an explanation was sought, they have furnished to satiety the edifying sight of the blind leading the blind.

Confusion alone can result from such methods, and so it would seem more in the interest of right political thinking to avoid the use of terms which serve merely as a cloak to our ignorance and help not at all to the understanding of the matter.

Greek citizenship, we are very properly told (p. 294), consisted in the active participation by the holder in all the functions of government—in the executive, legislative and judiciary—and the failure to extend the limit of citizenship beyond the confines of city-State was due to the lack of the notions of representation and federalism in any but the loosest kind of sense. "The modern State has no exacting conception of citizenship to bar its expansion; but even in the modern State expansion has come, not through the extension of citizen rights to a wider sphere, but through the widening of the sphere of *allegiance* to a sovereign." "Common allegiance to the crown, not common citizenship issuing in the election of a common parliament, is the basis on which it [the British Empire] rests" (p. 299). Again in a note, p. 300; "This conception [*i. e.*, that of the Roman Empire] has largely entered into modern citizenship, which means a personal status and a local membership; but an English citizen has political rights, like the franchise, which bring him nearer to the Greek πολίτης than to the *civis Romanus* of the Empire."

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It is necessary to observe that Mr. Barker here uses a terminology not followed in America, for with us political rights form no necessary part of citizenship.

The machinery of the book is very good; there is prefixed a chronological table of events bearing on the text from Lycurgus to the *Contrat Social;* the index is quite full, and there are numerous footnotes and references. Of the footnotes there are several that might better have found a place in the text.

In concluding, it may be permitted to call attention to one or two points in the discussion of the slaves in the Greek States (pp. 360–36). The statement is made that "In Sparta, on the contrary, the Helots were indigenous Greeks enslaved by the Dorian conquest;" a view which modern historians of Greece discard for the one which sees in the Helots, citizens from whom the rights of citizenship have been taken because they did not fulfill their military duties.

Again "In Attica* * * the slaves outnumbered the citizens in the proportion of two to one." Here it must be remembered that citizens and freeborn are not equivalent terms—or else Mr. Barker is far astray in his figures, for, with the possible exception of Corinth, there was no city of consequence in Greece in which the free-born did not outnumber the slaves. To speak of "praedial serfs" seems a bit careless and to say that "legally as well as socially they [the slaves of Attica] were not degraded" may properly be regarded as expressing the state of their condition rather strongly.

E. G. ELLIOTT.

On the Civic Relations. By HENRY HOLT. (Boston and New York: Houghton, Mifflin and Company. 1907. Pp. xxxi, 668.)

This is a largely rewritten and enlarged third edition of the author's *Talks on Civics.* The catechetical form has been abandoned, and the attempt to reach very young readers frankly given up. The work is confessedly based on second-hand authorities, but these have been selected with discriminating care. The volume deals with elementary legal as well as with economic and political problems; it is clearly written, well arranged, and may be read with profit by any one seriously interested in the problems of modern civic life.

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Four Centuries of the Panama Canal. By WILLIS FLETCHER JOHNSON. (New York: Henry Holt and Company. 1906. Pp. xxi, 461.)

Mr. Willis Fletcher Johnson has sought in his large volume to cover comprehensively the history of the Panama Canal and project; to explain in detail the climatic, sanitary, engineering and political questions which the United States is attempting to solve in its present work of canal construction. The first three chapters, comprising fifty pages, are concerned with the history preceding 1850. The following fifty pages bring the narrative down to 1890, or to about the time when the United States government began to interest itself in the project. Then follow 175 pages, giving in much detail the story of the adoption of the Panama route by the United States government, the establishment of the republic of Panama, and the acquisition, by the United States from Panama, of the right to construct the waterway. One-third of the book is concerned with an account of the work as it has thus far progressed.

The reader of the volume will hardly need to be told that the author is a man whose literary training has been that of a newspaper writer. The narrative is unnecessarily long. Serious students of the canal question will be surprised to find that the volume contains very few references to the many authorities from which the author must have drawn his information. Those who are acquainted with the admirably complete and concise "History of Interoceanic Projects and Communications," contained in the *Report of the Isthmian Canal Commission, 1899–1901*, will be certain to feel that it is a better history than Mr. Johnson has succeeded in writing. Moreover, the discussion of technical questions in this *Report of the Isthmian Canal Commission* and in the *Report of the Board of Consulting Engineers for the Panama Canal* will certainly be considered superior to that contained in Mr. Johnson's volume.

In view of the fact that the canal is being constructed to aid the commerce and industries of the United States, one can not help wondering that Mr. Johnson did not discuss the relation of the canal to the commercial and industrial progress of the United States. If it be said that such a discussion does not belong to a historical work, the reply must be that the major part of this volume, *Four Centuries of the Panama Canal*, deals with present-day problems. The thorough treatment of the commercial and industrial value of the canal con-

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tained in the *Report of the Isthmian Canal Commission, 1899–1901* contains the data for as full a discussion of that subject as any author might desire.

Throughout the work unlimited praise is bestowed upon Secretary Taft. Everybody will agree with the author that the able secretary of war is entitled to great praise. By giving such prominence to the services of the secretary of war, the highly important work of the distinguished engineers who located the canal, who worked out the plan for the construction of the great waterway, and who inaugurated the immense task of executing the project, has not received its merited measure of praise.

EMORY R. JOHNSON.

La constitution juridique de l'empire colonial britannique. Par H. SPEYER. (Paris: Arthur Rousseau. 1906. Pp. viii and 337.)

The study of the details of British colonial administration by continental writers is always instructive, not only because of their point of view but likewise by reason of their freedom from local bias. The present volume, which forms a valuable contribution to this discussion, is no exception to the rule. The author, who is a member of the law faculty of the University of Brussels, is as clear in statement as he is simple in diction; throughout, he adheres strictly to a preconceived plan in which every point is rigorously assigned to its proper place.

Prefaced by a brief bibliography, the work is divided into seven chapters; the first consists of a geographical introduction comprising a short historical and statistical review of the various groups of dependencies; two chapters are then devoted to an account of their political organization; attention is here directed to the methods of executive, legislative and financial control; the fourth chapter reviews the historical evolution of the three forms of government designated by the author as "the administrative," "the representative" and "the parliamentary." The story of the rise of colonial federation in Canada, Australia and South Africa is then briefly narrated. The sixth chapter, sketching the development of jurisprudence and private law in the several parts of the British Empire, while belonging perhaps more properly to the domain of law than to that of political economy, is especially interesting by reason of its comparative

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novelty; the treatment of imperial federation in the final chapter is also not without value.

In the hands of the reader, familiar with British institutions, the work suffers because of the large portion of it given over to matters of fact. Almost every statement made in the first five chapters is well known and the extreme simplicity of style in itself is wearisome; the volume might make an excellent text-book, but for this purpose it would be lacking in sufficiency of data and citation of authorities. In his outline of civil, commercial and penal law, the author is more than usually happy in his methods; he concisely but clearly states the principles adopted by the crown and parliament in retaining or rejecting in the different dependencies the alien systems of jurisprudence, which may have existed prior to British occupation; he also shows quite skillfully, considering his brevity, how English law and custom have frequently been grafted on foreign stock or have supplanted it; numerous effects of the application and expansion of the doctrines of the common law are likewise cited.

Imperial federation forms an inspiring topic, to which considerable space is given; the fiscal policy of Mr. Chamberlain in relation to the dependencies is viewed with favor and its possible effects are considered at some length. Attention is also directed to the political and military aspects of the problem; the author is inclined to believe that fiscal and military difficulties must be solved before there can be any political union; that if necessary for the maintenance of the empire, England will renounce legislative and administrative control over the autonomous colonies, providing that they remain voluntarily under her nominal sovereignty and that, in addition to the more positive ties of a commercial and military character, there be maintained a certain moral unity, a sentiment of loyalty and the pride of race; on the other hand he doubts the results of a great war, should the mother country, struggling for existence, ever be obliged to appeal to her children for support. The conclusions reached by him are not, however, in any sense positive and it is extremely difficult to surmise how his opinions may already have been modified by the proceedings of the recent colonial conference on imperial federation. From the colonial point of view, Dr. Speyer sees in the constitution of the British Empire a genuine preservation of the best traditions of antiquity. Reviewing the experience of England as a promoter of colonial undertakings, he concludes that the success of such enterprises does not by any means depend exclusively upon mili-

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tary force and economic activity, but that the promotion of liberty and a system of tolerance constitute not only a moral duty but also a skillful policy.

Throughout the book in weighing debatable questions a fair and judicial attitude is generally maintained. A chronological chart showing the constitutional development of the principal autonomous colonies is inserted at the end of the volume; a more extensive bibliography, more detailed reference to the authorities in certain sections and a few maps would add greatly to its usefulness; nevertheless, as a concise, yet comprehensive treatise of the subject, the book occupies a special place in the literature devoted to the discussion of colonial politics and administration.

HENRY C. MORRIS.

American Consular Jurisdiction in the Orient. By FRANK E. HINCKLEY, Clerk of the United States Court for China. (Washington, D. C.: W. H. Londermilk and Company. 1906. Pp. 283.)

This is a work covering with its main text 196 pages, with its Appendix and Index 87 more, making 283 in all.

The work is very intelligently and thoroughly done and the appointment of Dr. Hinckley, on the organization of the United States court for China, as its clerk opens for him a place of much usefulness and seems a fitting recognition of his scholarly preparation.

The headings of the chapters suggest the scope of the treatise and are as follows: Historic Forms of Extra-territoriality; the United States' Oriental Treaties; Acts of Congress Establishing the System of Consular Courts; Legal Rights under the Jurisdiction, including Domicil, Marriage, Inheritance, Persons Accused of Crime; Missionaries, Real Property, Taxation, Commercial Privileges, International Tribunals of Egypt, Mixed Cases in China; the Foreign Municipality of Shanghai and Grounds for Relinquishing Jurisdiction.

With our greatly increasing intercourse with China and the establishment of a United States court for that vast territory rapidly opening to exploitation, this careful and it is believed accurate work must be of great value. It is curious to trace in its pages the change in our relations to the Asiatic countries which is illustrated by the fact (p. 35) that in 1831 a Japanese junk having been blown to sea and reached Oregon, the survivors found on board were taken back to

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Japan on an American ship but the vessel was fired on when she entered Yedo bay and was not allowed to put the castaways on shore. Our first treaty with Japan was negotiated just fifty years ago on the seventeenth of June of this year, and it was the first of her treaties with western powers.

The variety and importance of the questions considered in Dr. Hinckley's work is a constant surprise even to a lawyer familiar with international law and the jurisdiction of our consular courts.

As to the "open door commercial policy," he says (p. 144) it "has a profound effect upon extra-territorial rights in China, in that it maintains a general uniformity of commercial rights of foreigners throughout the empire, whereas the adverse policy of demanding special commercial privileges would greatly increase the difficulties of administering justice in consular courts."

He shows a great defect in the reporting of the foreign consular decisions in Turkey which are often only accessible through notes in the *Journal du droit international privé* where references are made to Turkish publications. He points out that our consular jurisdiction is relinquished whenever the territory heretofore included comes into the absolute possession of a European power, as when Hong Kong was ceded to Great Britain, and Madagascar became a colony of France.

He observes (p. 196) that "notwithstanding the extensive commerce and large influence which the United States has come to enjoy in the orient, the system of American consular courts has remained practically without the attention of congress since 1848. In the interest of justice to American citizens in those countries where the jurisdiction is not likely to be relinquished for years to come, and with the object of maintaining a high standard in our international relations, it is apparently necessary for the government of the United States to provide an improved system of consular extra-territorial jurisdiction."

The Appendix makes a useful collection of extracts from treaties and statutes, orders and rules bearing on the subject considered. It is suggested that the indiscriminate praise accorded in the preface to our former representatives in the orient requires qualification. That service was deeply tainted by the appointment of politicians who had party claims but were too disreputable for home appointment. They exercised, in some cases with gross corruption and extreme oppression, the very great powers confided to them and did

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this almost unchecked certainly as late as General Grant's administration. It is hoped and believed that the present situation is quite different.

We congratulate Dr. Hinckley on having on having written an admirable handbook upon an interesting, important and unhackneyed subject.

CHARLES NOBLE GREGORY.

The Aliens Act and the Right of Asylum. By N. W. SIBLEY and ALFRED ELIAS. (London: William Clowes and Sons. 1906. Pp. ix, 161.)

Mr. Sibley is a barrister at law of Lincolns Inn. He received his B.A. from London University and his LL.M. from Trin. H., Cambridge. He has already attracted most favorable attention by a more extended work published by him in 1905 jointly with Mr. F. E. Smith, later elected to the House of Commons from Liverpool, on *International Law as Interpreted During the Russo-Japanese War.* Mr. Elias is a barrister of Grays Inn. The present very admirable little work consists of the main text, eighty pages, also of several appendices.

Appendix I consists of tables, statutes, forms, rules and orders, covering forty-four pages.

Appendix II, of thirteen pages, deals with the right of asylum in the law of England.

Appendix III with statistics on alien immigration covers six pages, and a copious index of seventeen pages complete the book.

Part I of the text deals with international law on the admission of aliens, the *Droit du Renvoi,* and the right of asylum.

Part II with the comparative jurisprudence of these subjects.

Part III with the status of an alien at common law and by statute.

With the history of English legislation on the subjects treated and a discussion of the connection between aliens acts and extradition. It includes an analysis of the English aliens act of 1895 and a table of punishments and penalties.

The limited but thorough scope of the work is intimated by this table of contents.

All is clear, lucid, orderly and unpretentious.

The almost complete omission of all citation of texts or cases from this country is a defect for our readers, but is doubtless due to the

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strict adherence to the English act and its interpretation and administration. The many and important cases decided by our own federal supreme court, especially as to Chinese exclusion, have largely turned upon the provisions of our Constitution, but not wholly. Thus in United States v. Turner, 24 Sup. Ct. R. 719, our supreme court in 1903 upheld the right of congress to provide for the exclusion of alien anarchists. The decision being rested "on the accepted principle of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe; or on the power to regulate commerce with foreign nations." And see Kaoru Yamataya v. Fisher, 23 Sup. Ct. R. 611, and United States v. Ju Toy, 25 Sup. Ct. R. 644, and many cases there cited. See also "A Question of International Law in the Deportation of Aliens" by this writer in *Juridical Review* (Edinburgh), July, 1906. The extended discussion of the rights of aliens by Hon. Hannis Taylor in his *International Law* (1901), a work which is quoted in England even more than this country, might well have been referred to. These are, however, omissions which in so limited a work are perhaps necessary. The book has been reviewed and commended warmly in the *American Journal of International Law* (vol. i, p. 260) by the accomplished editor, Dr. Scott. He has called attention to the humane provisions of the English act exempting from exclusion on the ground of want of means persons flying from persecution on religious or political grounds in certain cases, and deeming them as wise as humane, he respectfully calls the spirit of these provisions to the attention of our law makers "lest we debar unawares a Romilly or deport a Carl Schurz." We heartily concur. The rigid and inelastic severity of our aliens acts distinctly requires relaxation as a concession to humanity and, it is hoped, they may be wisely revised in these respects. In the meantime the little book reviewed is welcome as a clear and admirable, though brief, presentation of the alien laws of our kindred nation and of facts and statistics as to their operation which throw valuable light on our own.

CHARLES NOBLE GREGORY.

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American Civics. By A. G. FRADENBURGH. (New York: Hinds, Noble and Eldredge. 1906. Pp. xvii, 285.)

This book is intended for high schools and academies, especially in New York State. It is a pity that so many such books are issued. This work is not needed and is not as good as some others in the market. It is accurate and covers a wide field; but is not particularly well arranged, lacks definition of many of the technical terms employed, shows little study of the fundamental conceptions of politics and would have been much more satisfactory had the author possessed greater knowledge of law. The chapter on Legal Rights and Obligations is particularly inadequate. It should have been left out altogether, or have been made better.

B. C. S.

The Consular Service of the United States: Its History and Activities. By CHESTER LLOYD JONES. (Publications of the University of Pennsylvania: Series in Political Economy and Public Law No. 18. 1906. Pp. 136.)

The recently awakened interest in favor of an efficient, well directed consular service which resulted in Secretary's Root's "merit system," the reorganization act of April 15, 1906, and the regulations promulgated by President Roosevelt on June 27, 1907, has also created an interest on the historical side of the question.

The American consular service evolved from chaos without any definite plans or policy. It is the adaptation of a service which grew up from the fiscal necessities of the American revolution. Adopted with all its defects, it was left to drift for over half a century without the necessary legislation for its proper organization and regulation. Though the act of 1792 (which remained the fundamental act for sixty-four years) worked very badly, congress was slow to apply remedies. Though there were supplemental acts in 1803, 1810, 1818, 1823 and 1840 to meet the abuses of American shipmasters, and to secure protection of American seamen in foreign ports, all efforts to remedy the evils of the fee system and other chief defects of the service were fruitless until the enactment of the incomplete law of 1856, which has remained the basis for the regulation of the service till the present.

The partial reorganization of 1856—though it fixed salaries for

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consuls of the first class, prohibited them from engaging in trade and better defined their obligations as to records, reports, etc.—left many defects, some of which have been remedied by later reform movements, and some of which have continued until the present.

Other reforms needed were higher qualifications, permanency of service, a system of promotion, higher salaries, abolition of all extra official fees, and provision for better inspection. Steps toward reorganization on a better business basis were taken in 1868, 1872, 1884 and 1886 without success. A new series of attempts was begun by executive orders, for promotion and examination in 1895, since which the agitation for other reforms have been continuous. Since 1898 the business interests have awakened to the importance of the consular service in facilitating trade, and have urged common sense reforms—a few of which were secured by the act of April, 1906.

The legislative history of the service, its present organization and duties, its assistance of foreign trade and suggestions for its improvements are interestingly treated by Mr. Jones. His special object has been to point out the development of its relations to trade; the kinds of service now rendered in the protection and extension of commerce, and the defects of the organization. Consular courts are also treated, and a chapter on European consular systems is added.

Mr. Jones points out how completely the original purpose of the consular service has been changed. In its early history it was maintained primarily for the protection of American seamen as individuals, and its duties were almost wholly confined to that purpose. It had no connection with the protection of customs from fraud or the extension of trade. As early as 1799 the idea of making the service of value to the customs house authorities was fixed in law. The certification of invoices by consuls begun in 1818, and extended in 1823, and emphasized in 1835 by order of the secretary of the treasury by the addition of severe penalties for shipments not certified, was regulated in 1856 by requiring that no consul should certify unless satisfied that statements were true; in 1862 by providing that no dutiable ad valorem goods should be admitted without certificate; in 1863 by requiring invoices in triplicate to prevent alterations; and in 1890 (after a half century of urging) by requiring that the invoice should be issued in the consular district where the goods were manufactured. Though for seventy-five years there was no adequate means for checking false statements as to the value of goods, a plan was finally evolved (1897) which has greatly checked the tendency

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toward dishonesty in invoicing and established fair conditions in the import trade.

It was only gradually that the idea of using consuls as envoys of trade assumed any importance. Before 1856 there was little collection of statistics that were of any direct value to trade. The reports begun in 1842 were largely for the benefit of the customs officials and were largely compiled from foreign and domestic statistical publications. The text of annual consular reports, first published in 1856, did not crowd out the material from other sources until 1869. Not till 1871 was there any marked improvement in the direction of uniform and systematic methods, of arranging and collecting data, and not till 1874 was great emphasis put on trade with the United States and suggestions for improving it solicited. From 1874, and especially since 1895, the main original object of the reports has almost disappeared and the study of trade conditions abroad for the purpose of extending United States trade to new markets has become the special object.

Until 1880 the work of consuls was desultory, and only in recent years has it been systematized and made obligatory. Provision for a monthly series of reports, begun in October, 1880, was the first consistent effort to use them in the development of trade. The publication of special reports on special subjects was begun in 1890. Since 1898, daily advance sheets of reports that seemed of immediate value to trade have been published.

In the value of these reports, there has been a noticeable evolution. There has gradually grown up a greater definiteness, exactness and reliability—due to more efficient direction, better editing, and more experienced and better trained officials. Under Secretary Root's "merit system" preferment and promotion of consuls is dependent upon the value of their reports.

The author indicates the many ways by which consuls serve trade—by furnishing valuable information concerning trade restrictions, food laws, patent laws, the requirements necessary to suit long established customs and local prejudices, shortage of crops, mechanical difficulties (packing, harbors, transportation, etc.), market conditions, and foreign business methods (credit system and methods of sale).

He also shows that the actual aid to exporters is limited by the impermanence of the consular service, indifference of most manufacturers to the foreign market, failure to take advantage of the information furnished, and the practice of dealers with brokers.

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The evolution of administrative control of the service is an interesting feature of its history. Until 1833 there was little direction of the service by anyone. The absence of any printed guide showing definite duties of consuls resulted in a deplorable lack of uniformity. In 1833, Secretary Livingston first issued uniform instructions. These were revised in 1849; but the first tolerably complete instructions were those of 1857 which constituted the first great step toward present definite regulations.

Not till fifty years ago did congress provide for a consul-general—who at first had no supervision over other consuls. The extension of supervisory power over the consulates was a gradual development. Such supervision and inspection was needed long before it was provided. One of the most aggravated abuses of the service before 1870 arose in connection with the early consular duties in relation to seamen. There were many false claims for reimbursement by dishonest consuls. These brazen examples of fraud continued for over half a century—especially at posts of the South Pacific—before any effective check was devised. In 1870, these were lessened by Inspector Keim's visiting tour, and since 1870 such dishonesty has been practically eliminated by the development of better communication, by restrictive laws, and by the critical auditing of accounts.

The management and supervision of the service by the government at Washington evolved very slowly. From the early bureauless state department, the consular and diplomatic bureau was the first to emerge, but it was not till 1874 that the duties of each branch were concentrated under a special chief.

In the concluding chapter the author offers the following suggestions for the organization of a more efficient service:

1. Salaries should be higher.

2. Fees as remuneration for consuls should be abolished altogether, and some plan devised to remove any chance of unauthorized charges for official services.

3. Practical examinations should test the ability of applicants to understand business conditions and needs and to use their special training in the common-sense, intelligent direction of affairs.

4. Advancement should be by merit rather than by seniority.

5. Permanent service with provision for ultimate retirement at a fixed age.

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6. More adequate supervision, direction, and inspection; (*a*) of the consular reports by the government and (*b*) of the service abroad by a permanent corps of inspectors.

7. Some modification of the service of consuls engaged in business.

8. Abolition of the office of consular agent or commercial agent which was inherited from the revolution.

Mr. Jones' monograph represents the most thorough study of the consular service since that of Mr. Schuyler twenty years ago. He has rendered valuable service. The extent of his investigation is indicated by the full supply of bibliographies and footnote references. In the collection and preparation of his material he has been assisted by the Carnegie Institution.

J. M. CALLAHAN.

The Robert Lucas Journal of the War of 1812 during the Campaign under General William Hull. Edited by JOHN C. PARRISH. (The Iowa State Historical Society. 1906. Pp. ix, 103.)

The Iowa Historical Society, which published the *Executive Journal* of its territorial governor a short time ago, has added to its publications this earlier journal of the governor. The two *Journals* are printed and bound in uniform style. This *Journal* of the campaign is provided with three facsimiles of the original manuscript, with maps of the expedition, and with a complete index. Appendices contain letters of Lucas describing the campaign, written shortly after his return. First presented in the *Iowa Journal of History*, the work is now reprinted in a limited edition of 400 copies.

Lucas occupied a most remarkable position in this expedition. He was brigadier-general of Ohio State militia at the opening of the war, was appointed captain in the regular army in April, 1812, and, having received no orders from the war department, enlisted as a private in a company of volunteers commanded by his brother. The *Journal*, beginning on April 25, 1812, tells the story of that company's experiences as they went northward to Detroit, describes the siege and ignominous surrender of that place, and finally narrates the events of the return across Lake Erie and down the Ohio river to Lucas's home, which was reached on September 4. The editor has discovered the interesting fact that Cass incorporated sections, taken from this *Journal*, into his report of the campaign, which condemned

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General Hull. The narrative is forceful and straightforward, without grace of style, but detailed in statement of facts.

BERNARD C. STEINER.

Municipal Government of the City of New York. By ABBY G. BAKER and ABBY H. WARE. (Boston: Ginn and Company. 1906. Pp. xii, 350.)

This attractively illustrated little volume bears witness to the increased interest in the study of city government in our schools. In contents the book is a popular presentation of the city charter and the workings of the various city departments under it. Short historical sketches are given of the origin of the city, of its charter and of its departments.

About the defects of the working of the government and suggestions wherein it might be improved by using the experiences of foreign cities and even some of our own, the authors have little to say. In fact the book is one grand glorification of New York City. Few hints are given that everything is not perfect. Excelled in nothing, New York is not even to be outdone in rolling up debts, for on p. 294 we meet the remarkable climax that "in 1904 the gross funded debt of the city was five hundred and twenty-nine billions two hundred and ninety-seven millions nine hundred and thirteen dollars!" The pupil who studies this will be more of a braggart than the average New Yorker is now reputed to be.

In many places the book reads like King's guide-book to New York. Numerous illustrations of public schools, monuments and scenery are thrown in with little regard to the context. Subject matter which has nothing whatever to do with the government of the city is put in. Columbia and New York Universities, the New York and Consolidated Stock Exchanges, the Produce Exchange, etc., are included to the exclusion of more valuable material. The wealth of detail is appalling,. We are told the number of rows of steel columns in the subway, the number of layers of asphalt, the size and weight of the cars, the number of stories in a charitable building, the number of lakes in Central Park, etc.

There are many curious inaccuracies, among others the following: "mantles" for "mantels" (p. 134), "luxuriant apartment houses" (p. 238), an inaccurate illustration for voting-booths (p. 36), a rail-

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way ash removal station is entilted "The Incinerator" (p. 115). On p. 27, we are solemnly told that the commission on the charter settled down to an "exhaustive study—of the Constitution of the United States," preparatory to drafting the charter; on p. 30, that "when our federal government came into existence the right of suffrage was made one of the underlying principles of the Constitution," and so on, and so on. It would go far beyond the limits of our space to put them all down. A good map of the city in addition to the "birdseye view" from King's guide-book is a desideratum.

JAMES SULLIVAN.

The Congo: A Report of the Commission of Enquiry Appointed by the Congo Free State Government. (New York and London: G. P. Putnam's Sons. 1906. Pp. 171.)

As a result of repeated charges against the administration of the Congo Free State, of which those made by Mr. Casement, the British consul in the Congo, were the most direct and circumstantial, Leopold of Belgium, as king-sovereign, appointed in 1904 a commission of enquiry to visit the State and to report upon the condition of the natives as affected by the actions of individuals and Free State officials. This commission, which consisted of one Italian, one Swiss, and one Belgian, spent nearly five months in the Congo basin and its report was published in the *Bulletin Official de l'Etat Independant du Congo* for September-October, 1905. The present volume is a complete and accurate translation of the French text. The report of the commission of enquiry is the most important document which has ever appeared upon the subject of Leopold's rule in Africa. The evidence upon which the commission based its finding has never been made public. Therefore the correctness of the conclusions arrived at is largely a matter of conjecture. But as the report has been published by Leopold and made his own, the animadversions upon his administration therein set forth are not the exaggerated expressions of a political pamphlet. The commission found that the abuses existent in the Congo were not sporadic instances in which individuals were at fault, but that the natives which Leopold had promised in 1885 to take under his benevolent protection were the victims of an ingenious system of exploitation under the guise of taxation. This labor-tax, the commission seeks to justify as a neces-

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sity for the welfare of the natives as well as for the maintenance of the State, but it admits that formerly the natives were compelled to labor practically all the time in order to pay the taxes laid, the amount of which depended solely upon the ability of the State's officials to collect them. Although, under the law of 1903, the labor-taxes (*i. e.*, the rubber and food taxes) are limited to forty hours per month for each man, while prior to it they were unlimited, the commission finds that frequently a native must labor many times forty hours in order to collect enough rubber or food for one month's taxes. Such a system is exploitation and nothing else. Trade cannot exist alongside of it. "The native is entitled to nothing; what he receives is a mere gratuity," stated the Belgian premier, M. de Smet de Naeyer. The commission of enquiry shows, whether willingly or not, that this is the theory upon which Leopold's system in the Congo has been based. Whatever outward trappings of civilization there are in the Congo, in the way of railroads, telegraphs, hospitals and the like (and the commission dwells upon the magnitude of these), only serve to strengthen the impression that Leopold's profession of purpose, that of "the material and moral regeneration of the native," has long since given way to the ulterior one of making the Congo pay at the cost not only of the present welfare of the natives in his domain, but of the future value of the domain itself. The reforms which the commission urges as imperative, viz: "the large and liberal interpretation and application of the laws regarding the holding of real estate, the effective enforcement of the law limiting to forty hours per month the prestation of work, the suppression of the system of sentries, the permission of the *capitas* to carry arms, the revocation from the commercial companies of the right to exercise coercion, the regulation of military expeditions, and the freedom of the public prosecutor from administrative control," are the very ones which Leopold's critics have been urging for a decade. Upon the publication of the commission's report Leopold appointed a committee to make effective the reforms proposed. Although this action was taken nearly a year and a half ago no reforms have been announced by the committee. As it is composed largely of officers in the State service and of members of the various concessionary companies, it is doubtful if the reforms which the commission has recommended can be made effective.

JESSE S. REEVES.

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British Imperialism and Commercial Supremacy. By VICTOR BERARD. Translated by H. W. Faskett. (New York: Longmans, Green and Company. 1906.)

This volume is a study of the issues raised by Mr. Chamberlain's attack on British free trade policy. M. Berard is the secretary of the *Revue de Paris*, and his works previously published are concerned with history and politics. The present work is written from the same points of view although it deals with an economic subject. In the preface which the author has furnished to the English translation he says: "I have combated with all my might that 'Brummagem' radicalism, builder of empire and destroyer of peoples." The purpose so frankly declared gives the keynote of the work and explains its remarkably opinionated style. It is a vigorously written treatise, but is clogged by the mass of material gathered as ammunition and not otherwise useful.

H. J. FORD.

The Secret of the Totem. By ANDREW LANG. (New York: Longmans, Green and Company. 1905. Pp. x, 215.)

This work is a sequel to the author's *Social Origins and Primal Law*, published three years ago. It restates and argues at length his theory of the origin of totemism advanced in the previous work, and incidentally reviews and criticises other theories: The problems presented by such institutions as totemism, exogamy, avoidances between kinsfolk, etc., are of immense importance as their solution will probably elucidate all social beginnings, clearing up much that is now obscure in the genesis of government and the nature of political authority. Unfortunately, nothing like any consensus of opinion among specialists in that field is yet apparent, and the various theories under consideration could hardly be understood except by those specialists. At present, it must suffice to express appreciation of the great service which Mr. Lang renders to those interested in results of anthropological research by the treatises he issues from time to time giving an account of the progress of observations and speculation in that field.

H. J. FORD.

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Great Britain in Modern Africa. By EDGAR SANDERSON. (New York: Charles Scribner's Sons. 1907. Pp. 380.)

This volume is not of value to either the historian or political scientist. Its pages are very largely devoted to descriptions of the wars and battles of the English with the native African tribes, and with the Boers. Of colonial policies and problems and methods of colonial administration there is little or no mention. Furthermore, the tone of the work throughout is markedly chauvinistic. The following accounts of the causes and events leading up to the South African war is typical:

"The British cause was that of freedom, progress and political equality; the Boer leader sought to maintain the worst kind of conservatism in the shape of caste-dominance for an illiberal and ignorant oligarchy. We need not waste words over the diplomatic discussions as to the franchise for the oppressed Uitlanders. The Boer war-party, headed by Mr Krüger, never intended to make any real concessions, and only sought to gain time, hoping for European intervention, and looking to overt rebellion in Cape Colony, if not also in Natal. Krüger had secured the adhesion to his cause of the Orange Free State, ruled by President Steyn, and his ultimate purpose was, beyond doubt, that of sweeping British power in South Africa 'into the sea,' and creating Boer sovereignty throughout the whole vast territory. Possessed of large resources through the discovery of the gold mines, the Boer government had for years, and especially since 1895, been steadily preparing for war in the provision of the best weapons and ammunition which Europe could supply, and in the organization of military forces with the aid of German, French and Russian experts. It became clear to the British government that the Boer republics meant to fight."

The Law of Carriers. By DE WITT C. MOORE. (Albany: Matthew Bender and Company. 1906. Pp. cxxvii, 1044.)

This is a favorable specimen of a useful and unambitious sort of book —a treatise for the daily use of lawyers. The text is composed not of extracts from opinions but of the author's own statements, clearly phrased. The citations of authorities are ample, though not exhaustive. As the book has a purely practical purpose, it does not go into the history of the subject. Nor does it spend space upon

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theoretical discussions of points not yet settled. The only part that appeals to the non-professional reader is the chapter on interstate transportation; and as this chapter is only forty-four pages long, it is not surprising to find that the treatment is somewhat scanty; indeed, chiefly a paraphrase of the interstate commerce act and the railway rate act. The appendix presents the railway rate act in full.

The Power to Regulate Corporations and Commerce. By FRANK HENDRICK. (New York: G. P. Putnam's Sons. 1906. Pp. lxxii, 516.)

Although this book is obviously prepared not for lawyers but for the general reader, it contains, after the fashion of law books, a table of cases; and this table, comprising almost two thousand references, proves the author's diligence. The book suffers from two disadvantages. One disadvantage is an introductory chapter so slightly connected with the topic as to turn many readers away; and the other is the author's mystical literary style. Sometimes—as on pp. 59, 67, 74–76, 216—the reader, perplexed by what certainly seems to be novel and unsound doctrine, is compelled to believe that he does not grasp the author's real meaning.

Smith, Sir Thomas. De Republica Anglorum. Edited by L. ALSTON, with a Preface by F. W. MAITLAND. (New York: G. P. Putnam's Sons; Cambridge University Press. 1906. Pp. xi, 210.)

Students of English constitutional history, as well as those interested in the history of political literature will welcome the new and critical edition of this work of Elizabeth's secretary of state, and ambassador to France. In his introduction the editor observes that in Smith's case, as is so often done in other cases, modern views have been read into the text which, upon closer study, it would appear that the author had not held. This has been true especially with reference to the ascription to Sir Thomas of the modern doctrine of the legally absolute and sovereign power of parliament. It would appear from its use in other connections that the term "absolute" had not a very definite meaning in the writer's mind, and that "sovereignty" is not used in the modern sense as the supreme will of the State as an abstract political person.

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The text followed is that of the first edition of 1583, and the spelling of the original is retained. In appendices are given references to later editions, and extracts from the *Description of England*, by Harrison, between whom and Sir Thomas there were mutual borrowings.

The care with which the original text is reproduced and the critical apparatus furnished in the introduction and appendices would seem to render this a definitive edition of the work.

New England Town Law: A Digest of Statutes and Decisions Concerning Towns and Town Officers. By JAMES S. GARLAND. (Boston: The Boston Book Company. 1906. Pp. xxxi, 894.)

As its title indicates the main body of this work is a digest of statutes and judicial decisions intended, primarily, for practicing lawyers and public officials. The law in each of the six New England States is printed and paged separately. But a uniform system of headings, arranged alphabetically from assessors to weights and measures, permits an easy comparison of the established provisions in the different States, which is further aided by a common index to the whole volume. This method of arrangement serves to make the volume of no little value also to students of political science, as a work of reference and collection of materials on this important branch of American local government.

A general introduction of eighty-three pages and brief introductions to the sections on each State add still further to the value of the book to the general reader interested in the New England towns either in their historical or present day aspects. In the general introduction free use has been made of local histories and historical monographs, and this adds a good deal to the summary of the existing law. But this part of the work falls short of being what it might have been made—in itself a careful, systematic discussion of the New England town as a living political institution. This is indicated at first glance by the fact that the long introduction is not clearly marked off into divisions, and although the page headings show a succession of topics these are by no means well classified. But the greatest weakness is the fact that, apart from the historical material, the language is that of the legal digest. There are few broad

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statements summarizing general tendencies, almost no illustrations from the actual practices of government and no attempt at literary presentation, so that this part of the book also is of value mainly as a source of material for a scientific study of the subject.

It goes without saying that such a work of this scope contains much information that has hitherto escaped the notice of previous writers; and one or two items of significance may here be noted: The largest town in New England governed under the town meeting system is Brookline, Mass. It has a population of 24,000, 6600 assessed polls, and 4000 registered voters. The assessed valuation of property is more than $90,000,000, and the total expenditures for 1905 were over $1,750,000. But as it is now impossible for all voters to attend the town meeting, the legislation a few years ago provided for a referendum upon petition, from the decisions of the town meeting.

Illustrations of control by the higher authorities over the actions of the town meeting are to be seen in the necessity for the approval of town by-laws. In Massachusetts, town by-laws do not go into effect unless approved by the attorney-general of the commonwealth. In Maine they must be approved by the county commissioners or a judge of the supreme judicial court.

It is surprising to learn that in New Hampshire the annual town meeting has disappeared, and regular meetings are now held only biennially.

At the end of the introduction there is a brief statement in reference to the extension of the town system in the Middle West and Northwest. Here the author evidently assumes that the town has the same virility and significance as in New England. While established by law, the town is in fact of much less importance in these States; and the county is the important center of political activity and local administration. Mr. Garland is more clearly mistaken in speaking of the town as established in the States of the Pacific slope—being perhaps misled by the use of the term township for the justices' district in California, and an unused law authorizing the creation of townships in the State of Washington. Indeed, the westward movement of the town meeting seems to have stopped with the arid plains; and there is as yet no indication of its extension to the States beyond.

JOHN A. FAIRLIE.

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The Federal Power over Carriers and Corporations. By E. PARMLEE PRENTICE. (New York: The Macmillan Company. 1906. Pp. 244.)

This book is distinctively polemic in purpose and tone, and has the merits and limitations incident to that character. The author strongly disapproves the trend in public and judicial opinion toward a broad construction of the commerce clause of the Federal Constitution, and deems it unwarranted by the circumstances of its origin and history. It is, in his view, "a most dangerous and mistaken notion" that present questions in interstate commerce are new and beyond the contemplation of the statesmen of a century ago. He, therefore, strongly condemns the proposed requirement of a federal license or federal incorporation for corporations engaged in interstate commerce, and insists that it will result in "a complete centralization of the government."

The book shows extensive research, is copious in citations and quotations, not only of judicial decisions, but of speeches of members of congress, addresses, newspaper editorials, etc. As the number of pages indicates, the book is not to be criticised for any needless iteration of amplification, but rather for inadequacy of treatment of so grave and complicated a subject.

The book is not addressed distinctively to lawyers, who are, as a rule, more interested in knowing how the law has been declared than in what may be termed academic discussion as to how it ought to have been declared. While all thoughtful citizens ought to be interested in the discussion of the limits of the as yet unexercised power of the federal government of the commerce clause, any intelligent discussion must necessarily be based primarily upon the clear statement of what the courts have decided as to the construction of the commerce clause. This is the more necessary in view of the confused and uncertain trend of judicial decisions in the past, and the close divisions of the supreme court in adapting the concise and comprehensive language of the commerce clause of the Constitution to the new problems presented by the amazing commercial expansion of the country.

The inadequacy of this method of treatment of the subject is illustrated by the author's reference to the recent Lottery Case, wherein the reasoning if not the conclusion of the court is the most significant of all its decisions as to the limits of the unexercised federal power in the regulation of commerce. It was decided by

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the court in this case, though with a close division and strong dissent, that congress could rightfully prohibit certain traffic among the States when it deemed that the public good required that form of regulation; in other words, that it was a question of legislative discretion when regulation may rightfully be effected by prohibition. The book under review contains several references to the dissenting opinion in this case, but has no statement or reference concerning the prevailing opinion or the decision of the court. It is true that the case related only to the *subjects* of commerce among the States, and did not directly involve the power of congress in controlling the corporate relations of parties engaged in such commerce, and it is also true that the prevailing opinion declined to formulate any general rule as to the power of congress; nevertheless, any discussion of the unexercised power of congress in the regulation of interstate commerce over corporations or carriers is incomplete without recognition of the full import of the Lottery Case, as set forth in the prevailing, as well as the dissenting opinion of the court.

Any discussion of the commerce clause must begin with the great case of Gibbon v. Ogden, and an interesting chapter of this book is, therefore, devoted to the historic setting of this decision. The author points out that the decision, rendered in 1824, related solely to navigation by water, and did not refer to transportation by land; and that the State law was involved not because it established a monopoly in interstate transportation, but because it amounted to a regulation of the coasting trade, a subject which had been wholly confided to congress. The author, therefore, expresses the opinion that later decisions have been influenced by the broad expressions in the opinion of Chief Justice Marshall, not involved in the case before the court. While it may be true that the case in judgment in Gibbons v. Ogden does not warrant certain contentions now made as to the unexercised power of congress in the regulation of commerce, it cannot be said that the conclusion is warranted that the reasoning and scope of the decision related solely to transportation by water. Navigation was treated in Gibbons v. Ogden as an element of commerce, which was a form of transportation since largely superseded by railroads. It was directly decided that the federal power under the commerce clause, wherever it was extended, was exclusive, and included in its comprehensiveness all known modes of transportation, whether propelled by water or steam and whether of passengers or freight. While the case before the court involved transpor-

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tation by water, this was covered by the commerce clause not because it was transportation by water, but on the broader ground, that it was transportation among the States, and that was an element of commerce.

These considerations relate rather to the plan of the work than to its execution. It has distinctive merit in its clear and vigorous discussion of the limitations of the unexercised power of congress under the commerce clause. As there is little in the way of direct judicial authority on this subject, there is a legitimate field for such discussion. The author points out that the Constitution was framed during the short period when political ideas were those of the completest individual liberty; that the right to engage in commerce was derived from State law and vests in those to whom the State grants it, whether citizen, alien or corporation. He, therefore, heartily concurs with the view of the minority judges who dissented in the Northern Securities Case and the Lottery Case. He comments upon the fact that there is no express federal power of incorporation, and that the power has been sustained in the case of national banks as a means and not as an end. The constitutional difficulty lies not in the power of congress to incorporate companies for carrying on interstate and foreign commerce, but in its power to enforce such incorporation by limiting the right to engage in commerce among the States to those possessing a federal franchise or a federal license.

The author's discussion of the unwisdom and impolicy of centralization on broad considerations of public policy is more satisfactory than his presentation of the constitutional questions involved. He forcibly points out the impracticability of effecting great social reforms, such as the prohibition of child labor, through federal legislation in advance of the development of local public opinion, which is essential to make any such legislation effective.

The commerce clause was written for the days of the stage coach and the sailing vessel and it has been adapted by judicial construction to the age of steam and electricity. The increasing difficulty of construing a written constitution to meet the altered social and economic conditions never contemplated by its framers is illustrated by the close divisions of the supreme court in the Insular Cases, the Anti-Trust Railroad Cases, and the Lottery Cases, which contrast strikingly with the unanimity of the court in the great constitutional decisions of our earlier history. The developing power of public opinion, growing out of the changed economic conditions will doubt-

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less affect in the future as it has in the past, the construction of the commerce clause.

The decision of the supreme court in the Wabash Railway Cases, in 1886, that the State power of regulation of railway traffic did not and could not extend to interstate traffic in any form, even as to that part of it within the State, and that such regulation could only be effected by congress, was immediately followed a few months later by the enactment of the interstate commerce act of 1887. The action of congress was really forced by the demonstration of the impossibility of State action.

The book of Mr. Prentice, notwithstanding the limitations incident to its polemic character, is an interesting and suggestive contribution by a thoughtful man to the discussion of a great question.

F. N. JUDSON.

Documentary History of Reconstruction: Political, Military, Social, Religious, Educational and Industrial, 1865 to the Present Time. By WALTER L. FLEMING, Ph.D. (Cleveland: The Arthur H. Clark Company. Vol. I. 1906. Pp. xviii, 493; Vol. II. 1907. Pp. xiv, 480.)

These volumes of documents come at an opportune time, for much study has been and is being given to the period of reconstruction, and the field has by no means been exhausted. To those who do not care to rely altogether upon the interpretation given by the numerous writers to the events of that exciting period, and yet to whom the original sources are not accessible, these two volumes will be a welcome contribution. There is probably no one who has devoted so much time and study to an examination of the documents relating to that period as has Dr. Fleming, and he is thus well qualified to exercise discrimination in the selection of those documents which will be of most value to students in general. There were so many documents from which to choose that it was no easy task to select those which would be of most permanent value, and there will hardly be any one who will examine either of the volumes without wishing that some particular document or documents had been included instead of some which have found a place in them.

The more important documents like the civil rights bill of 1866, the freedmen's bureau acts, the thirteenth, fourteenth and fifteenth

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amendments, the several theories and plans of reconstruction excerpts from the so-called "black codes" of the Southern States, the platforms of many of the conventions, national and State, the four reconstruction acts, the tenure of office act, several orders of the war department, acts readmitting the States, and many personal accounts, letters and speeches are given in the first volume. The personal accounts are taken from various sources, from whites and blacks, from northerners and southerners, conservatives and radicals, but these accounts are mainly, if not entirely, taken from those who had personal acquaintance with the conditions then existing in the South, though this does not mean that they correctly portrayed those conditions. So far as we are aware, this is the first attempt, since the *History of Reconstruction* by Edward McPherson, which is now very rare, to bring together the more important documents and other source material for the use of those interested in this special period. The value of these volumes is further enhanced by the bibliographical references to secondary sources and an explanatory introduction with each chapter.

There are six chapters in the first volume and seven in the second, each chapter being subdivided into sections, and this arrangement makes the documents more convenient, all of those of a particular topic being together. While the table of contents practically refers to every document and certainly to every topic, there is also a very good index at the end of the second volume.

As is pointed out by Dr. Fleming in the preface, more space is given to the radical side in the first volume, the explanation being that most of the official documents and collections of testimony are of radical original and have been better preserved than the conservative material. Of the non-legal documents there are about twice as many which give what might be called the northern as opposed to the southern point of view. The documents given in the first volume illustrate very strikingly the problems of reconstruction and the various proposals and attempts to solve them. The second volume supplements the first by giving documents which illustrate the actual working out of reconstruction in the South, special reference being given to race relations and economic, political, social and educational conditions. While the material in the first volume is largely radical, that in the second is the reverse. As might be expected, there are fewer official and legal documents in the second volume, and as Dr. Fleming points out, the psychological element is

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more important, since the points of controversy were multiplied and the feeling more intense. The principal topics illuminated by the documents in the second volume are the Union League of America and its kindred orders, the "Red Strings" and the "Lincoln Brotherhood," Carpetbag and Negro Rule, the Enforcement Acts, the Ku Klux Movement, the Educational, Social, and Industrial Conditions and Problems. The last chapter gives documents illustrating the judicial and legislative undoing of reconstruction as well as some later conditions, including the restrictions placed on suffrage in the South.

There are a few criticisms which may be made. One is an error on p. 197 (vol. i), where reference to the civil rights act of 1866 is inadvertently placed with the resolution creating the reconstruction committee of fifteen. The most serious defect of the volumes is the fact that a few of the documents are not taken from original, but secondary sources. In some cases it may not have been possible to get the original source, but in some cases it was possible. For example, the report of the committee of the Florida legislature (p. 236) adverse to the fourteenth amendment, and the resolution of the Arkansas legislature on the same subject, are taken from the *Annual Cyclopedia*, 1866, instead of from the journals of the legislatures of those States. This is also true as to the inaugural address of Governor Walker of Florida (p. 257), the message of Governor Humphreys of Mississippi (p. 251), the report of a committee of the North Carolina legislature on the subject of negro testimony (p. 259), and a law of Alabama as to the marriage of negroes (p. 273), two of which are taken from the report of the reconstruction committee and two from a senate document. It may be that no mistakes were made in the reprinting of these documents, but errors can creep in so easily that it is always desirable that the original source, or at least the first publication be consulted.

This publication supplies a need, for it brings into comparatively small compass, not what the historian may think of the events of that period, but the documents which relate those events and which give the opinions of those living at the time. Dr. Fleming does not attempt to approve or controvert any particular theory, but lets the documents speak for themselves, and his labor will be appreciated by all those who have occasion to make a somewhat careful study of the period to which the documents relate.

HORACE EDGAR FLACK.

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History of Roman Private Law. Part I. Sources. By E. C. CLARK, Regius Professor of Civil Law in the University, of Cambridge. (Cambridge University Press. 1906. Pp. 168.)

Professor Clark proposes to trace, without minute detail, the history of Roman private law from the earliest times down to the legislation of Justinian, treating the events so far as possible in chronological order. This he considers the best method of showing clearly the process of historical development. For such a treatment he stated in 1883 that his materials were, "to a great extent, collected" (*Practical Jurisprudence*, p. 6), and he now issues the first volume of the work thus foreshadowed.

The most important recent contribution to this subject from the pen of an English civilian, Roby's *Roman Private Law in the Times of Cicero*, etc. (1902), is notable for the care with which it is founded upon the only sound basis, the ancient authorities. The same conscientious method is pursued by Clark, who, it may be noted, was Senior Classic at Cambridge in 1858, as Roby was in 1853.

Certain theories, brilliant yet seriously questionable, are so readily transmitted without fresh inquiry from one book to another—see for instance the "long descent" of Huschke's theory of *nexum*, pointed out by Mitteis in *Z. Sav. Stift.* 22, 97–100 (1901)—that it is a pleasure to obtain, from such scholars as Roby and Clark, the results of a thorough and independent survey of our classical sources. An acquaintance with these and a valuation of their contents should properly precede the study of the matter derived from them. Thus the present volume is almostentirely filled (secs. 1 to 6) with a condensed critical account of the Sources. This is followed by a "Chronological Sketch" (sec. 7), in which the author gives an outline of the whole work, as it will ultimately appear.

Section I deals with the *primary sources*, by which are meant the original documents, or full copies thereof, known either to us now or to our classical authorities at the time when they wrote. The term "primary" thus covers not only extant inscriptions and *negotia*, such as are contained in Bruns' *Fontes*, but also lost originals, like the *ius Papirianum*, which Pomponius, our informant, presumably consulted. Clark inclines, with Pais, to a third century date for this Papirian compilation, and does not share with Hirschfeld and most modern critics the belief in its late origin after the time of Cicero. The traditional history of the XII Tables he regards as substantially

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correct, and thus joins Girard, Cuq, Bréal, Erman, Lenel, Kipp, Greenidge, in condemning the iconoclasm of Pais and Lambert. He remarks that the famous *cippus* found in the Forum in 1899 casts a light upon early Roman law unknown to the classical writers, since it shows "that publication by inscription, in very early times, may not be so apocryphal as it has been hitherto considered."

Section II discusses the *secondary sources in the pre-literary period*, that is, the possible sources of information, not documentary but in the nature of historic records, upon which our own immediate authorities may have relied. In this, the most important chapter of the present volume, Clark discusses the credibility of early Roman history; and after making due allowance for manipulation and other causes of corruption, he does not "see sufficient reason to question the general truth and approximately historical order, even of the account which has come down to modern times" (p. 55). As to the early legal movements, though their year dates cannot be regarded as trustworthy, there is not, he thinks, "any strong reason to question the reputed order of "events in general" (p. 66).

In the next four sections he describes the *secondary sources in the literary period*, which are classified into (1) Historians, *e. g.*, Livy and Dionysius; (2) General Literature, *e. g.*, Plautus and Cicero; (3) Antiquaries, *e. g.*, Varro and Festus; (4) Jurists, from Cato Minor to Hermogenianus. Then comes, under the title "Chronological Sketch," a syllabus of the matter, arranged in strictly historical sequence, with which the subsequent volumes are to deal—in all 97 sections, of which seven are contained in Vol. I. Last, we find a useful table, showing at a glance the dates of the juristic writers and of their principal works.

The book as a whole displays that combination of sober judgment and sound scholarship which we expect from its author. He does not, however, seem to have taken sufficient pains to bring his material up to date. For instance, Girard's *Manuel* is cited from the second edition of 1897, not from the fourth of 1906, and so important a treatise as Kipp's *Geschichte der Quellen* (2d. ed., 1903) is not mentioned. In the paragraph describing the life and work of the jurist Julian (p. 118), no notice is taken of the inscription, found in 1899, which for the first time gives us his full name (*L. Octavius Cornelius Salvius Iulianus Aemilianus*) and many important facts as to his distinguished career. See Holtzendorff's *Encyk. der Rw.* I, p. 137, n. 2; *Z. Sav. Stift.* 23, p. 54 (1902).

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Again in connection with the *monumenta* (p. 12), and the work of Manilius (p. 102) our author might well have referred to Hirschfeld's opinion, now generally accepted, that Manilius wrote a treatise entitled "*Monumenta*" dealing with the laws of Numa (*Ber. der Berliner Akad. phil.-hist. Kl. 1903*, p. 2); but this ingenious theory is not noticed.

Of the younger Cato, in view of the long fragment in *Dig.* 45. 1.14.1., it is hardly correct to say that "we have no direct quotation from his books" (p. 102); and in the account of Gaius (p. 126) it would have been well to mention Jörs' interesting view, based upon the character of Gaius' citations, that his Institutes were founded upon the work of some earlier jurist dating from about 100 A. D. (Pauly-Wissowa, *Real-Encyc.*, 5, p. 1450 (1905).

Notwithstanding these omissions the general excellence of the book is such as to make us look forward with keen anticipation to the coming volumes, summarized on pp. 147–154. The historical work with which they would seem likely to prove most easily comparable is that of Cuq—*Institutions juridiques*, I, 1904 (*2nde édition refondue*). Clark bids fair to excel his French *confrère*, not only in clearness of arrangement of the subject matter, but in solidity, and in that valuable quality which savors of Roman procedure—caution.

W. H. Buckler.

The First Year of Roman Law. By Fernand Bernard. Translated by Charles P. Sherman, D.C.L. (New York: Oxford University Press, American Branch. 1906. Pp. xiii, 326.)

This translation is intended to serve "as a guide to the beginner or investigator of Roman law." It may do for the "beginner," but scarcely for the "investigator," since the modern authorities cited are but few and almost all French.

Though the title page is dated 1906, the references to Cuq's *Institutions*, vol. i, are unfortunately not to the latest edition of 1904, and those to Girard's *Manuel* are not to that of 1906. So also the Poste's *Gaius*, occasionally referred to by the translator, is not the enlarged edition of 1884. The exact dates of these editions should have been mentioned.

A more serious defect is the literalness of the translation, by which the sense is sometimes obscured, and of which the following are but a few samples:

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p. 26. Among the prudentes it is necessary to distinguish, *from* Augustus, two classes * * *

p. 37. *From the moment that* one had the right to kill his enemy, a fortiori he has the right to spare him.

p. 144. We think *as* Dareste, that * * *

p. 207. It used to be a very debated question among Romanists *of knowing* if in the classical era * * *

p. 229. The debtor *re-became* possessor.

p. 244. The rent is due to the *naked owner.*

There are also many errata *e. g.*, *Orsuna* for Osuna (p. 20, n. 3), *perduellio* (for perduellionis) damnatus (p. 89).

Apart from these blemishes, the book is well arranged as to matter and clear in style. It summarizes admirably in Book I (pp. 1–34) the history of Roman law and of the agencies from which it emanated, and the paragraphing of the material is most helpful.

W. H. BUCKLER.

The German Empire. By BURT ESTES HOWARD. (New York: The Macmillan Company. 1906. Pp. viii, 449.)

Heretofore the extent of information in English available to students of the German constitution has been limited mainly to a brief account of the imperial constitution, a short chapter on the emperor, another chapter on the *Reichstag* and *Bundesrath* and possibly a reference to the judicial system. The student who desired anything more than a superficial account of the principal institutions of the German empire was compelled to have recourse to the German treatises. In no English work could be found more than a paragraph or two concerning the German judiciary, the law of German citizenship, the government of the *Reichsland*, methods of legislation, the financial system or the place of the army and navy in the constitutional system of Germany. The result was, due mainly to an altogether too general inability or disinclination of American students to read German, a lamentable want of serious study of German public law and political science on this side of the Atlantic. In the present work written by an American scholar, trained in a German university and apparently imbued with the spirit and methods of the German investigators, we have a treatise that will compare favorably with the standard briefer works of some of the best German commenta-

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tors. It is based entirely on German sources, partly original and partly standard works of German writers, principally, but by no means exclusively, on the treatises of Laband, Zorn, Schulze, Arndt, Hänel and Meyer and the commentaries of Arndt and Seydel. It affords abundant evidence of wide and painstaking research and of unusual familiarity with the extensive literature of German public law and political science.

The German Empire deserves a more careful study by American publicists because of the solutions which it affords for the settlement of some of the most perplexing problems of a State having the federal form of government. Differing from the American republic in that it represents an attempt to combine the monarchial principle with the federal system and the principle of centralization in legislation with that of decentralization in administration, it nevertheless possesses in other particulars striking similarities. The problem of adjusting the relations between the central authority and the constituent units of the empire has been solved in a manner wholly original and unlike that followed in any other State having a dual system of government under a common sovereignty.

The main subjects treated in Dr. Howard's work are: The Founding of the Empire and the Constitutional Relations between it and the Individual States; the *Bundesrath,* the *Reichstag* and the Methods of Imperial Legislation; the Emperor; the Chancellor; Citizenship of the the Empire and of the States: the Judicial System; the Government of Alsace-Lorraine; the Imperial Financial System; and The Army and the Navy in so far as They are Imperial Institutions. His treatment of each of these subjects is, from the constitutional point of view, full, accurate and lucid. The author has a preëminently juristic bent of mind and in the treatment of his subject has followed closely the methods of the German juristic school of writers of which Laband and Zorn are among the best examples. He has a happy faculty for seeing institutions in their juridical relations and has succeeded well in giving them their proper constitutional setting in the German political system. On most controverted points, especially as regards federal relations, he follows the opinions of Laband. Sovereignty resides, according to him, not in the emperor, nor in the people, but in the totality of the States, *i. e.*, in the *Bundesrath.* The emperor, as such, is an authority not of residuary powers but of derivative powers and the presumption is always against any power claimed by him. Yet as emperor he has some of the elements

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of a monarch as well as that of president. Altogether his position is unique among executives and it is, in fact, impossible to classify him. Dr. Howard's discussion of the constitutional position of the chancellor is clear and interesting. The only way to avoid misapprehension as to the real nature of this puzzling office, he correctly observes is to distinguish between its dual nature, *i. e.*, between the chancellor's position as a Prussian delegate to the *Bundesrath*, on the one hand, and his position as the emperor's only responsible minister and the highest imperial official on the other.

Whether his responsibility is legal or political as the author points out, is purely an academic question since there is no means of enforcing either.

Like all States having the federal system of government Germany has had to deal with the difficult problem of a dual citizenship, one local and the other national. Most of the German commentators following Laband recognize the existence of both an imperial citizenship and a State citizenship although a few, like Seydel, deny the existence of the former, and some, like Le Fur, reject the idea of the latter. Dr. Howard proves conclusively to a judicial mind the existence of a double citizenship, although not coördinate and independent, occupying distinct spheres, but that the relation is rather one of subordination and dependence one toward the other. Contrary to the American rule, State citizenship in Germany is primary, and imperial citizenship is secondary, that is, the latter is derived from the former and imperial citizenship is lost when State citizenship is lost. Nevertheless it is characteristic of the German conception of the importance of uniformity among the States, that the conditions governing the acquisition of State citizenship (and in consequence of imperial citizenship) should be regulated by imperial law. Contrary also to the rule prevailing in the American States, State citizenship is not lost by mere withdrawal from the jurisdiction of the State, nor acquired in another State by mere establishment of residence therein, but in each case there must be a formal act of renunciation or naturalization before an administrative authority. It is a matter of regret that Mr. Howard did not make use of his extensive knowledge of the law of American citizenship (see his *Amerikannische Bürgerrecht*) to illuminate his chapter on German citizenship though some of the comparisons which naturally suggest themselves between the German and American systems. A careful reading of his chapter will show that some of the weak spots in our

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law as they have been brought to light in the recent report of the American citizenship commission (House Doc. No. 326–59th Cong., 2d Ses.) have been avoided in Germany by methods easily adaptable in America. Finally, it is to be noted that he has overlooked the imperial law of September 10, 1900, regulating the citizenship of foreigners as well as of natives who settle in the German protectorates.

Mr. Howard's chapters on the government of Alsace-Lorraine and the judicial system of Germany are both full and thorough and there is little in them to criticise. It may be observed, however, that in his discussion of judicial institutions he omits all reference to the various special courts (*besondere Gerichte*) both of the empire and of the States as well as of the administrative courts. Some account of the bar (*Rechtsanwaltschaft*) and the State attorneyship (*Staatsanwaltschaft*) certainly would not have been out of place. Likewise he might well have discussed the relation of the German judge to the State Constitution, the statutes and ordinances with a view to informing us as to his power to declare them null and void on the ground of formal defectiveness or of material inconsistency with a higher law. There is no reference in his extensive footnotes to Gneist's famous essay, entitled "*Soll der Richter über die Frage zu befinden haben ob ein Gesetz verfassungsmässig zu stände gekommen.*" Nor to the other literature of this interesting subject. Finally it does not clearly appear from his account that the *Gerichtsverfassungsgesetz* and other imperial laws relating to judicial organization and procedure apply only to the field of contentious jurisdiction and that the whole domain of voluntary jurisdiction is left entirely to the States to be exercised through such tribunals and according to such rules as they may prescribe.

As a whole there is little in Mr. Howard's book which merits anything but praise. It deserves to be studied by every student who is unable to read the German treatises yet who wishes to get the opinions of Laband and the other great German scholars on the controverted points of German public law. One or two minor errors need to be noted. "Schulze" and "Holtzendorff" are spelled "Schultze" and "Holzendorff" in a number of places. It is not clear what is meant by the "imperial" law of April, 1849 (pp. 7–8), since the empire was not founded until 1871. "Has," p. 5, line 11 from bottom of page, should be "had." The reference to the King of Prussia as "Kaiser of Germany" (p. 324) instead of "German Kaiser" is a slip that occurs once in the book. J. W. GARNER.

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Due Process of Law under the Federal Constitution. By LUCIUS POLK MCGEHEE, Professor of Law in the University of North Carolina; lately Associate Editor of the *American and English Encyclopædia of Law*, second edition. (Northport: Edward Thompson Company. 1906. Pp. x, 451.)

The purpose of this book is, as its name implies, to set forth the meaning of due process of law as provided by the fifth and the fourteenth amendments of the Constitution of the United States, as those amendments have been interpreted by the supreme court of the United States. Inasmuch, however, as a consideration of merely the decisions of that body would not give a complete idea of the law on the subject, since decisions of the highest State courts that State statutes violate the fourteenth amendment are not appealable to the highest United States court, our author has, notwithstanding his avowed purpose, examined and cited a great many of the decisions of the State courts. At the same time he has not attempted to cover the whole of the subject of due process of law in our constitutional law.

His book seems to be a careful and cautious statement of the law which he has not permitted to be influenced to any great extent by his personal opinions. The result of his work, therefore, is not any marked contribution to the development of the law. That is, his book is rather a description of the law, as it is, than an attempt to solve any of the knotty problems, which have not as yet been solved by the decisions of the courts. It will, however, be most useful for the practitioner and the student of our constitutional law so far as that law seeks by providing due process of law to protect the liberty and property of the individual.

Mr. McGehee's statement of the law seems, as has been said, to be in the main, accurate and fair. Like most lawyers he is, however, perhaps more in sympathy with the protection of individual rights than with the extension of governmental power. He would seem thus to lay down in a rather too unqualified a manner the rule that in abating a nuisance under a nuisance removal order, health officers "act at their peril, and if it is proved that they have overstepped the bounds of reasonable police action, the order will be no protection to them" (p. 374). While the law on this point is by no means clearly settled, there are a number of well considered cases, which hold or intimate that where the individual whose property is so destroyed,

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has had an opportunity by law, or whether provided by law or not, has had an actual opportunity to he heard on the question of the existence of the nuisance, the officers abating the nuisance are protected by such an order issued after a hearing, while some of cases have held, that an order to abate a nuisance issued after such a hearing may not be attacked except in a direct way (see, *e. g.*, Raymond v. Fish, 51 Conn. 80, and Metropolitan Board of Health v. Heister 37 A. Y. 661). To one who is interested in an efficient administration of the police power as it affects the public health, this is a very important matter. Such a one can hardly regret that this subject has not received a fuller treatment by Mr. McGehee.

On p. 212 our author makes a statement without qualification which is not supported by all the decisions and would not seem to be sound when looked at from the point of view of fundamental theory, namely, that the power of taxation cannot be delegated to private corporations (see, *e. g.*, Anderson v. Kerns Draining Co., 14 Ind. 199, and Drainage Co. Case, 11 La. Ann. 338).

But apart from a few such too broad statements the book is an extremely valuable one and cannot fail to fill a much needed place.

FRANK J. GOODNOW.

The American Nation. Vols. xvi, xvii, xviii, xix. (New York: Harper Brothers, 1906.)

Slavery and Abolition, 1831–1841. By ALBERT BUSHNELL HART. Pp. xv, 360.

Westward Extension, 1841–1850. By GEORGE PIERCE GARRISON. Pp. xiv, 366.

Parties and Slavery, 1850–1859. By THEODORE CLARKE SMITH. Pp. xvi, 341.

Causes of the Civil War, 1859–1861. By FRENCH ENSOR CHADWICK. Pp. xiv, 372.

These volumes cover the period from the rise of abolitionism to the outbreak of the Civil War. Professor Hart pictures the institution of slavery from all sides, summarizes the abolitionist attack upon it, and the argument returned by its defenders, and sketches the relations of abolitionism with the slave, the slave-holder, the government, and political anti-slavery. He emphasizes the isolation of the South in consequence of what Southerners themselves significantly named

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"the peculiar institution," and shows that that section was forced by the opinion not merely of the abolitionists but of the world at large, into a self-defensive, self-conscious attitude, which made it indisposed to meet even friendly criticism half way, or to try reforms of obvious wisdom. Professor Garrison deals with the renewal of the westward movement, because of the hard times that followed the panic of 1837, relates the story of Texan annexation, the occupation of Oregon, and the Mexican War, the military side of which he slurs, and sketches the rise of the slavery question in consequence of the acquisition of so much new territory—pursuing the narrative through the compromise of 1850. He insists convincingly that the annexation of Texas and the conquests from Mexico are to be regarded as the natural outcome of American expansion, rather than of a pro-slavery conspiracy, and holds that the former at least was hampered rather than helped by its connection with the slavery question. Professor Smith, beginning with the struggle for "finality" between the years 1850 and 1852, traces the rise, in consequence of the Kansas-Nebraska question, of those sectional parties which the framers of the finality dogma had foreseen and feared. His volume is one of the notable ones of the series in which it stands, both for style, arrangement, subject matter, and the attitude of mind which it reveals. Almost never does its author become the champion of any theory, but is content to regard ideas as forces moving opinion and so determining events, and to evaluate them as such rather than as ultimate truths. The two final chapters exhibit the complete sectionalization of the country on the eve of the civil war. It is with this same field that Admiral Chadwick opens his volume, the bulk of which, however, he devotes to an excellent narrative of the closing days of Buchanan's administration and the opening days of Lincoln's, and the fall of Fort Sumter. Never were the ineptitude and senility which an era of compromise had brought to power in the person of Buchanan better portrayed. Admiral Chadwick has a most unacademic but by no means reprehensible way of sizing up his characters, who, to his mind, are no mere lay figures of a process. Another point of interest is his theory that the struggle over the territorial question, which led directly to the war, was a needless dispute over a pure abstraction, which of course was Webster's view in his famous seventh of March speech.

It is not, however, the purpose of this review to criticsie these volumes, but to review briefly two or three of the many constitutional

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questions, in the guise of which the issue between the opponents and defenders of slavery appears at every turn, particularly the question of the relation of slavery and constitutional liberty, the territorial question, and the question of the right of secession. One of the facts which the slavery men adduced to prove the incompatibility of slavery and constitutional liberty, the irrepressible conflict of the two conceptions, was the ambiguous position of the free black man in the North as well as the South. In Chapter VI of his volume, Professor Hart shows that in legal status a free negro lost ground steadily from the time of the Revolution in both free and slave States. Between 1792 and 1838 he was excluded from the suffrage in Delaware, Maryland, Virginia, Kentucky, New Jersey, Connecticut and Pennsylvania. Other unfriendly legislation ensued. "Ohio began in 1803 to build up a black code, proceeding to a demand for a bond of $500 for negroes who might come into the State, and denying to the negro the right of testimony in cases in which a white man was a party, or admission to the public schools. Similar provisions were enacted by Indiana, Illinois, and Iowa, when they came into the Union. Illinois even prohibited the coming of negroes into the State on any terms" (page 83). In the slave-holding States the disabilities of the free negro were still more onerous. In four he had to have a guardian; in eight he was obliged to be registered; in general his testimony was not accepted against the white man. His right to engage in business was limited on every hand. Congress's attitude was no more friendly. True the implication of the second Missouri comprise is that a free negro might become "a citizen of a State," in the meaning of the fourth article of the Constitution. But on the other hand congress never recognized the right of other than white persons to acquire citizenship by naturalization, and the presumption of both fugitive slave laws was that an African was a slave. The question of citizen ship received its final solution at the hands of the courts. In 1833, Judge Daggett of Connecticut decided that a free negro was a person but not a citizen, thus foreshadowing Taney's decision in the Dred Scott Case. Whatever rights and privileges of citizenship a State might confer upon a free negro, Taney declared, it could not make him a citizen within the meaning of the United States Constitution. This conclusion Justice Curtis ably combated, but it would seem that the preponderance of fact was on the side of the Chief Justice.

But not only did slavery degrade the free black man, it also constituted a standing menace to the liberties of the white race, at least

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so it was contended. This is Lincoln's argument in his ironical paradox, demonstrating the reciprocal right of A and B, the one white and the other black, to enslave one another (Hart, p. 322); and it receives rather startling confirmation from Calhoun's justification of slavery as the bulwark of an aristocratic Republic (Chadwick, p. 41). The origin of the argument, however, dates from the attempt of those members of congress who decried the rising agitation of the slavery question, first to burke anti-slavery petitions, and secondly, to authorize exclusion of incendiary publications from the mails. On May 26, 1836, the House resolved "that all petitions * * * relating in any way * * * to the subject of slavery * * * shall without being either printed or referred, be laid upon the table, and that no further action whatever shall be had thereon;" and four years later it made a standing rule that no memorial on slavery should be entertained in any way whatsoever. Such was the gagging policy against which John Quincy Adams fought with every available parliamentary device, to his triumph in December, 1844. Were the gag resolutions unconstitutional? Professor Hart seems to think (p. 260) that the question is determined by the first amendment, but what the first amendment does is to prohibit the enactment by congress of *laws* abridging freedom of speech, the press, petition, etc. It is necessary only to point out that a resolution adopted by a single chamber to determine its parliamentary procedure is not a law. Calhoun's proposition in 1836, "that any mail matter other than letters touching the subject of slavery, should not be delivered in any State prohibiting the circulation of such matter" (p. 287), stood on another footing; and the objections to it under the first amendment and also as an attempt to make as many "kinds of federal law as there were varieties of State legislation on the subject" prevailed with comparative ease. "Nevertheless," as Professor Hart observes, "in our day the disputed principles have been conceded." Congressional enactment excludes obscene literature and lottery literature from the mails, and *In re* Rahrer (140 U. S., 545) the supreme court upheld an act of congress exactly akin to Calhoun's measure (26 Stat. at Large, 313).

The history of the territorial question occupies chapters xvi, xix and xx of Professor Garrison's volume and most of Professor Smith's volume. Briefly summarized, it is as follows: Everybody in 1820 conceded to congress the right to deal with the territories with regard to slavery as it deemed expedient. By 1860 both the pro-slavery

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and anti-slavery parties had discovered a limitation upon congress's power in that phrase of the fifth amendment which declares that "No person shall be * * * deprived of life, liberty or property without due process of law." The anti-slavery following, however, regarding the negro as a person, though "held to service" in certain States, emphasized the word "liberty" in the above quoted clause and denied congress's right to *admit* slavery *into* any territory; while the pro-slavery men, viewing the negro "held to service" as property, emphasized the word "property," and denied congress's power to *exclude* slavery *from* any territory. In the Dred Scott decision the supreme court adopted the pro-slavery view which was then ten years old. The anti-slavery, or rather the Republican, position was developed in consequence of this decision. Professor Smith exhibits the *obiter* character of that portion of the Dred Scott decision which deals with the territorial question most clearly. On the other hand, I cannot accept his view, though it is the usual one, that the Southern demand in 1859 for federal protection of slavery in the territories represented an advance upon the Dred Scott decision. It was settled doctrine from the outset, that wherever slave property fell within the jurisdiction of the federal government, it was entitled to federal protection like any other property; and the government steadily extended diplomatic protection to the coastwise slave trade (Cases of *The Comet*, etc., *Hart*, 292, *ff*). The Dred Scott decision is not without its interest in our contemporary jurisprudence. Taney's most fundamental assumption was that congress must take its ideas of property from the States, an idea which still comprise an element of the supreme court's thinking. The original package case above referred to is evidence of this fact, and the lottery decision (188 U. S., 321) is a further illustration of it. The view that territories are part of the United States independently of the action of congress, was of course overruled in the recent insular decisions (182 U. S.).

My reason for discussing the question of secession is furnished by Professor Garrison's confident dictum on p. 12 of his work, that both North and South originally regarded the union under the Constitution as a confederacy, from which any State might withdraw at will, which expression of opinion, however, he follows up by the admission in a footnote that this is a "vexed question." By 1860 the Southern people were generally convinced that the States possessed the right to secede from the Union, not as a revolutionary right—revolution-

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ary rights being less in repute than at the time of the Declaration of Independence—but as a sovereign right. What kind of a right is, or was, a sovereign right? It must be admitted at the outset that the doctrine of the right of secession as a sovereign right owed some degree of its success, not improbably, to its more or less hazy character. Not many have very clear ideas on the subject of sovereignty even today; perhaps such ideas were not clearer fifty years ago; and there is no doubt that the men who framed and adopted the Constitution rose from the perusal of their Locke with notions of the matter that were very vague indeed. But this of course is by no means the whole story, or even a large part of it. The words sovereign and sovereignty were woven by Calhoun into a dialectical fabric of admirable consistency, the warp and woof whereof was spun from the history of the Republic itself. First then, I shall state Calhoun's argument in outline, secondly indicate its points of contact with questions of historical fact, and finally review some contradictory verdicts on these questions of fact. But this last with the idea merely of making some suggestion which should be taken into account before arriving at any conclusions on the points in dispute, and not at all with the idea of composing the dispute itself.

Calhoun formulated the following syllogism: The States were sovereign before the adoption of the Constitution; sovereignty is indivisible; therefore, while delegating certain powers to the government created by the Constitution, the States did not part with any of their sovereignty to it. From this body of doctrine certain other doctrines issued: first, that the Constitution was a compact between the sovereign States; the alternative view, stated by Webster, being that it was the enactment of an already existing sovereign; second, that the sovereign States remained each the final interpreter of the Constitution for itself; the alternative view being that the supreme court of the United States possessed this function; third, that the States remained free, each, to withdraw from the Union, created by the Constitution, whenever it should see fit; the alternative view being that the States were bound by the Constitution irrevocably (Chadwick, chapter iii.) The questions of fact raised by these assertions we may easily isolate, but before proceeding to do so we should notice that in each case the question raised is of the existence of certain notions rather than of certain external conditions, at a certain time. Thus, first, were the States *thought* to be sovereign before the adoption of the Constitution; second, was sovereignty *thought* to be

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indivisible at that time? third, Was the Constitution *thought* to be a compact? fourth, Were the States *thought* to be the final interpreters of the Constitution, each for itself? fifth, Were they *thought* to have the right to withdraw from the Union at will? We may take these questions up seriatim.

(1) On this topic the reader should see Professor Van Tyne's article in the current number of *The American Historical Review* (April, 1907), entitled Sovereignty in the American Revolution. The writer shows conclusively that before the adoption of the Constitution sovereignty was attributed to the States with great unanimity. But does this dispose entirely even of the question under consideration? While the States were called sovereign, there was also some recognition at least that their community of language, descent and interest, made the American people a nation, and "the American Nation" was a frequently recurring phrase in the pages of *The Federalist*. Of course it may be said that the idea of an American nation was ethnical merely, an idea without any counterpart in the realm of political organization; that the States were the only political organizations of the time; and that sovereignty is the attribute of such an organization. On the other hand, there is Professor Burgess's suggestion that the American nation before the adoption of the Constitution was already politically organized in the convention that framed it and in the conventions that ratified it. (2) On this question the evidence is overwhelming that the constitutional fathers believed not only that sovereignty was divisible, but that they had divided it between the States and the Union. (*Federalist*, No. 39, by Madison.) Utterances of those who regarded it as divisible are, therefore, of doubtful import if not actually beside the point when any question touching the residence of sovereignty subsequently to the adoption of the Constitution is under consideration. (3) On this point Professor McLaughlin's *Social Compact and Constitutional Construction* (*American Historical Review*, vol. v, 467–490) is most convincing. Summing up his case, the writer says (*The Confederation and the Constitution. The American Nation*, vol. x, p. 314.): "At times the Constitution was spoken of as a compact, but this never meant a mere agreement equivalent to a treaty between sovereign States. Compact was the most solemn and serious word in the political vocabulary of the men of that generation; society itself was founded on compact, and government rested on the same foundation." It was with the recent discussion on nullification and the novel

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ideas of compact and sovereignty therein developed in mind that Madison, writing in 1830 warned his countrymen against "errors which have their sources in * * * the silent innovations of time on the meaning of words and phrases." (4) On this point the issue being more definite, the evidence is also more definite. On the other hand it is singularly contradictory. The right which Webster claimed for the supreme court in 1830 and which everybody today recognizes that it possesses, of determining the constitutionality of congressional enactments, was not bestowed upon it in terms by the Constitution. But there were those in the convention of 1787 who asserted that the right would fall to the supreme court because of its position, and this view is often strongly voiced in the conventions that ratified the Constitution, and Hamilton expounds it at length in *The Federalist* (No. 81). On the other hand, Madison contradicted the notion, and in *Federalist* No. 46 actually foreshadows nullification. But the corner stone of nullification was really laid by Madison's report to the Virginia legislature in 1799. Madison now accepted the notion that the supreme court may decide as to the constitutionality of acts of congress, but such a decision, he urged, was binding only upon the coördinate departments of the federal government, not upon the States. When, however, the supreme court did finally overrule an act of congress, in 1803 (Marbury v. Madison), it grounded its right to do so on the assumption that there is a sovereign people of the United States, who enact the Constitution and whose peculiar spokesman the court itself is (see also Chisholm vs. Georgia). Taney's chief justiceship marked a period of constitutional reaction. Yet in that very decision, in which the court passes the meridian of strict construction, namely, the Dred Scott Case, the court pronounced invalid an act of congress. Moreover, that the court considered its decisions binding upon the States, is proved by Abelman v. Booth (Smith, p. 207). It may be objected that these decisions, being subsequent to the adoption of the Constitution, are not pertinent evidence on the question we are discussing. This is true. But it must be remembered, first, that the claims to the right of nullification and the right of secession also were put forth subsequently to the adoption of the Constitution, and secondly, that the Constitution is an advancing conception. Now granting that the above evidence shows that the supreme court's conception of the Constitution was authoritative when these claims arose, does not the question present itself as to how these claims accorded with this contemporary authoritative

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view of the Constitution, especially since the real question at issue is the revolutionary or non-revolutionary character of succession? The objection, however, is very much to the point in evaluating the utterances of minorities like the Virginia and Kentucky resolutions, and the resolutions of the Hartford convention, which were neither authoritative nor contemporary with the adoption of the Constitution. (5) On this point I prefer to oppose to Professor Garrison's view the view expressed by Professor McLaughlin in his companion volume of the same series, leaving it to the reader, to canvass the evidence offered by each writer. Says Professor McLaughlin (*Confederation and Constitution*, p. 314): "There is absolutely no evidence to support the notion that they (the framers of the Constitution) believed they were simply entering into a new order of things, in which the States would have the right as before to refuse obedience and to disregard obligations, or from which they could at any time quietly retire when they believed the Union did not suit their purposes. Everything points to the fact that they intended to form a real government and a permanent union. All the solemn debates in the State conventions, all the heated arguments of the anti-federalists, all the outcry against the establishment of a consolidated government are absurd, meaningless, if the people felt that they had the legal right to go right on just as before, and leave the union when they saw fit."

In conclusion, I wish to emphasize the appreciation that one gains from reading these volumes, of the inadequacy of the formula "State rights versus Nationalism," as a statement of the issue between the sections in 1860. In the first place, at that time the North was fully as strict constructionist as the South, and had been since the days of Jackson, and anti-slavery had always shown itself fully as capable of taking a narrow view of federal powers as pro-slavery, and vice versa. In the second place, the South was as desirous of nationality as the North, but keenly self-conscious and aware of its peculiarity. It felt that the nation that desired it was no longer possible within the old Union, while the North, unaware of any peculiarity of its own, and not really appreciating that of the South, continued to believe with something like simplicity indeed in the old idea of American nationality—"the Nation" was a phrase frequently on Lincoln's lips—and to regard the Union as the only possible embodiment of that nationality.

EDWARD S. CORWIN.

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Life and Letters of the First Earl of Durham: 1792–1840. By STUART J. REID. Two Volumes. (New York and London: Longmans, Green and Company. 1906. Pp. xix, 409; xi, 409.)

English political biography for the nineteenth century is gradually becoming complete. Full and authentic biographies—biographies based on letters and family papers—are still wanting among more modern statesmen in the case of Bright, Beaconsfield and Salisbury. An authentic biography of Bright is unfortunately not yet in sight; but both the Beaconsfield and the Salisbury biographies are in preparation. At the time work was begun on the Salisbury biography there were still wanting biographies of three men who had played a great part in English political life in the first half of last century. Taking these in the order of their importance, or rather in the order of what they accomplished for political progress in Great Britain, they were Durham, Grey and Graham. All these men were of the administration which carried the great reform bill of 1832. Grey was premier in that historic cabinet; while Durham and Graham were of the committee of four by which the reform bill was drafted for submission to the cabinet, before it was introduced by Russell to the House of Commons.

Of these three men none has lost more in fame by the long delay attending the publication of his life and letters than the Earl of Durham. He was the greatest liberal of the nineteenth century. He did more for the advancement of liberalism in England and in Canada than any man who preceded him in the house of lords or any peer who up to the present time has followed him in the advocacy of liberal principles. He stood by liberalism as distinct from whiggism in its darkest days in England. Between 1813 and 1835 he was the only man among the peers who advocated parliamentary reform; reform in the Church of England; the removal of disabilities due to religious opinions; reform in the civil service; and the establishment of a national system of education. He advocated all these reforms in parliament and on the platform in the constituencies without any concern as to how these reforms, and in particular the reform in the system of parliamentary representation, would affect the fortunes of the whig oligarchy, which, when liberal principles were once more in the ascendancy after the political downfall of Wellington in 1829, conceived that by reason of the services of the whigs between the revolution of 1688 and the beginning of the reign of George III, it had

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a mortgage on the government of Great Britain, and could, without heed to popular opinion or popular endorsement of its action, divide the spoils of office among the small and exclusive group of which the old whig aristocracy was composed. Durham never asked how the reforms he so boldly championed—all of which have long ago been accomplished—would affect what his contemporaries who were of the whig oligarchy described as "their order." Class interests and privileges, mostly usurpations of popular rights, never appealed to him as they did to his whig colleagues of the Grey administration. He asked himself in all these matters what was due to the people of England; and publicly declared that he would never cease to agitate so long as an ascertained popular grievance went unredressed.

For fifty years there was not a more obvious gap in English political biography than that due to the non-appearance of a full and authentic life of Durham. Just what Durham accomplished in connection with the reform bill while he was of the Grey cabinet; how he stood out for a reform bill which should really reform the rotten and nondescript system of election to the house of commons and restore political power to the middle and working classes; and to what extent he put backbone into Grey—all this was not known until Mr. Stuart Reid's *Life and Letters of Lord Durham* was published. And moreover until this biography appeared credit had been given to everybody but Durham for the epoch-making report on Canada. Even in the *Dictionary of National Biography*, Charles Buller is credited with the authorship; although in his lifetime Buller was careful to make it known that it was the work of his chief. Buller never disguised the fact that it was the work of the man who at a great sacrifice to himself, sacrifice of personal comfort, exile from home, and postponement of political ambitions—went out to Canada in 1838 to make an end of the turmoil that was then so seriously endangering not only the peace and advancement of upper and lower Canada, but jeopardizing the imperial connection.

Biographies of Grey and Graham, as has been said, are still lacking but Grey can be judged to a very great extent from his letters to King William IV, and from his remarkable correspondence with Princess Lieven; and more material for forming a judgment of Grey is forthcoming in Mr. Reid's *Life of Durham*. An estimate of Graham, who was never in the first class of English statesmen, can be formed from the life of him that was written in the early sixties by McCullagh Torrens. Before Mr. Reid's biography appeared it was possible

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to estimate Durham from his speeches, and from his famous report on the political problems which upper and lower Canada presented to British statesmen in 1837 and 1838. Durham's speeches could be read in the newspaper files and in the *Hansards*. But none but the closest students of political history ever turn to the *Hansards*, or brave the dust on newspaper files fifty or sixty years old; and until the war in South Africa even Durham's famous report on Canada was much more frequently alluded to than it was read; and it had practically passed out of the public mind until it was reprinted three or four years ago.

Thus it comes about that Mr. Reid's *Life and Letters of Durham* does much more for the reformer of 1832 and the high commissioner to Canada of 1838 than is usually done for a long departed statesman by a detailed and authentic record of his life. Mr. Reid's two volumes do much more than merely fill up an obvious gap in British political biography. They form a monument almost as abiding as that on Penshaw Hill, Durham, to a man of the English landed aristocracy who in the early days of liberalism was a liberal without whig or any other qualification, from the time he entered the house of commons in 1813; and who stood as loyally by his liberalism when he was high commissioner at Quebec, as he did in the house of commons or after 1829 in the house of lords. Elevation to a peerage usually subdues the liberalism of most men. It puts a greater distance between them and the common people. New peers—even men of liberal principles—soon come to think and speak of "their order," and to regard themselves as of a class apart. Men with whom they have worked in politics when they were of the house of commons come to be regarded as agitators even if they are but continuing movements for reform with which the peers were associated in their plebeian days; and like Melbourne, who was Durham's colleague in the Grey administration, and who treated him so cavalierly in the Canadian crisis of 1838, they are disposed to ask, "Why can't you leave things alone?"

No such change came over Durham after 1829 when he was elevated to a peerage and transferred his parliamentary activities from the house of commons to the house of lords. His line in the house of lords and at great public meetings in the constituencies of the North of England was the same as it had been when he was of the house of commons, and was dependent on the votes of the freeholders of the county of Durham for his seat in parliament. He did not agree with

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Grey, his father-in-law, nor with Melbourne, Russell and Palmerston, that in reform concession to the popular demand had gone as far as it must go after the whig oligarchy had conceded the act of 1832. The reform act never satisfied Durham. He wanted a parliamentary franchise as wide as exists today in Great Britain. It was his aim to bring every man within the constitution, and to give him his part in its working. It has required two more reform acts—those of 1867 and 1884–85, each preceded by long agitation—to realize what Durham regarded as due to the people of England in 1832 and the immediately succeeding years. Moreover, in 1832, Durham urged that election by ballot should be included in the reform act; as Lord John Russell urged that part of the cost of parliamentary elections should be lifted from the shoulders of parliamentary candidates and defrayed out of the public purse. Both proposals were deemed premature. The whigs were opposed to making an end to open voting because they feared that the great whig landed proprietors might lose their control over the small boroughs that were continued as parliamentary entities after 1832, and might also lose the territorial political influence that they exercised in the constituencies.

Durham could not carry the Grey cabinet with him either for a wider franchise than the ten pound householder qualification in boroughs or for the ballot. Eleven out of the thirteen members of Grey's cabinet were peers or held courtesy titles as peers. All those men, Durham alone excepted, were of the whig oligarchy; and in the cabinet the narrow and exclusive whig ideas of popular political rights—ideas as to what it was safe for the whig oligarchy to concede with due regard to the safety of "their order" easily triumphed; and the whigs conceded only such a measure of reform as would save appearances for men like Grey and Russell who had been identified with the reform movement in the days when the whigs were in opposition and the tories were supreme. Only such a measure was conceded as would least endanger the control which the whig magnates exercised over parliamentary representation in the smaller boroughs and in the counties. Russell could not persuade the whigs to travel even as far as he was willing to go. Durham could induce them to go but a short distance in his direction. Russell accepted the reform act and after 1832 insisted that it was a final measure, and that it was useless for the radicals in and out of parliament to agitate for more. Durham, on the other hand, went into the constituencies and urged the need of further reform. He strongly believed in the ulti-

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mate triumph of democracy. He believed in it and worked for it; for he held and was always ready to assert that the people of England sooner or later would gain all the political rights that should be theirs; and he had no narrow conception of what these rights should be.

It was a great loss for the cause of political progress when Durham went for two years as ambassador to St. Petersburg. His death in 1840, so soon after his return from his Canadian mission, was a loss that was never fully replaced so far as the house of lords was concerned; for never since Durham's day has there been a liberal peer who was so heartily and sincerely in sympathy with great popular causes or who was so whole-heartedly trusted by the rank and file of the liberal party throughout the country.

The value of the biography lies chiefly in the wealth of new material that was available for Mr. Reid—in the letters which have been embodied in the book, rather than in the frame work which the biographer has constructed. The framework is conventional but is generally good for Durham's career in England. For his work in Canada the setting is less satisfactory; and the workmanship of the biography cannot be said to have been much influenced by the examples which Mr. Reid had before him in the biographies of Gladstone and Granville.

EDWARD PORRITT.

Citizenship of the United States, Expatriation and Protection Abroad. (House of Representatives, Document No. 326, Fifty-ninth Congress, Second Session. Washington. 1906. Pp. 538.)

A joint resolution passed the senate of the United States in April, 1906, providing for a commission to examine into the subjects of citzenship, expatriation and protection with instructions to make recommendations to congress, but in the house the committee on foreign affairs rejected the plan and suggested instead a board of expert diplomatists to be appointed by the secretary of state. The result was the creation in July of the same year of such a board composed of Mr. James B. Scott, solicitor for the state department, Mr. David J. Hill, minister to Netherlands, and Mr. Gaillard Hunt, chief of the passport bureau. The method adopted, at once economical and scientific, and so far superior to the more common method of congressional commissions, was highly to the credit of the house com-

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mittee on foreign affairs. The recommendations of the board were made with very slight modification the substance of a new law on the subject at the late session of congress (H. R. No. 24122, Feb. 28, 1907). The law will do much toward accomplishing the purpose of the board "to furnish bona fide American citizens with suitable and well authenticated evidence of their citizenship; to prevent the fraudulent use of American protection; and to render the course of the government in exercising that protection more clear and certain." At the Rio Janeiro conference in 1906 the rule was adopted that when a naturalized citizen returns to the country of his birth and resides there two years without the intention of returning to the country in which he was naturalized, he shall be considered as having reassumed his original citizenship. The new law of the United States makes this rule residence for two years in the State from which he came or for five years in any other foreign State. The report of the board had recommended the five year period for all alike. The same principle is now embodied in nearly all the treaties of the United States with the difference that expatriation is assumed when the person has resided three years in any country other than the one from whence he came and two years in the country from whence he came. The principle of expatriation after a brief and perfectly definite period of foreign domicile is now clearly established in general practice.

The appendices form the bulk of the report as well as the part of the most permanent value. These give a digest of State and federal decisions and the text of domestic and foreign legislation on citizenship.

E. J. BENTON.

Report of the Twenty-second Conference of the International Law Association, held at Christiania, September, 1905. (London: 1906. Pp. 316.)

The International Law Association is one of three international organizations devoted to the betterment of international law, and the advance of arbitration. Both the Institute of International Law and the International Law Association, which was originally known as the Association for the Reform and Codification of the Law of Nations, were founded in 1873. A third organization, the International Maritime Committee, was founded by M. Louis Franck of

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Belgium in 1896. The maritime committee is chiefly concerned with the practical reform and unification of maritime law. The Institute of International Law is composed of a limited number of specialists on international law, and endeavors to formulate rules upon disputed questions which it is hoped may later become the subject of international conventions. Unlike these two bodies the International Law Association is primarily a popularizer. It early abandoned the idea of a codification of international law, and turned to the more practical phases of reform. A change in name came in recognition of the change in purpose. Arbitration is kept uppermost among the subjects of discussion at the meetings. The membership is unlimited, and special efforts are put forth to encourage the coöperation of shipowners, merchants and lawyers. At present a large majority of the members are representatives of mercantile interests in English speaking countries, though the sessions are commonly held in some city of Europe. During the early years of its existence the International Law Association met annually and published a report of its proceedings, but since the formation of the maritime committee the two have adopted the practice of biennial meetings in alternate years.

The report for 1905 contains a brief history of the association and of its purposes and work. Particular care is taken at each session to review the events of the preceding two years indicating progress of international arbitration, and the reports present a digest of all cases of arbitration between the conferences. The papers read at the conference at Christiania, in 1905, were upon such subjects as the law of belligerency and neutrality; an international prize court of appeal; legal relations of charterers to shipowners; the extension of the Berne railway transport of goods convention, 1890; and a draft code of rules for international recognition of foreign companies.

E. J. BENTON.

Josiah Warren: The First American Anarchist. A Sociological Study. By WILLIAM BAILIE. (Boston: Small, Maynard and Company. 1906. Pp. xxxviii, 135.)

It should be scarcely necessary to tell the intelligent reader that there are anarchists and anarchists. We have at the one extreme the thrower of dynamite bombs, and at the other the mild but vision-

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ary apostle of non-resistance. Opposition to governmental authority unites all anarchists. As the writer of the present work says of "modern anarchism," "it questions the supremacy of the State, the inviolability of statute laws and the divine right of all authority, spiritual or temporal." The great evil, we are told in all past history, and the parent of present evils is "abuse of power."

Modern anarchists are divided into main groups, the communist anarchists and the individualist anarchists. The communist anarchists may be regarded as adherents of socialism minus the authoritative element in socialism. They hold that in the absence of governmental authority men will naturally and spontaneously unite into groups, the smaller groups into larger groups, etc., and will thus cooperatively carry on common production. The individualist anarchists lay emphasis upon individualism and the sovereignty of the individual, holding that each one should be free to go his own way, provided he is not guilty of conduct invading the liberty of another.

The author of the present work is an admirer and follower of Josiah Warren, whom he designates "the first American anarchist." This biography affords an opportunity to study in the concrete the evolution of thought of a leader of the individualist anarchists. Josiah Warren, of distinguished lineage, was born in Boston in 1798, and belonged to the same family with Genl. Joseph Warren of Bunker Hill fame. His life, his social experiments and the evolution of his thought are interestingly described by the author, William Bailie, who searched old files of newspapers and pamphlets, and carefully studied Warren's works in preparing this first biography of the anarchist leader. Warren was a professional musician and showed his mechanical talent in several inventions which appear to have been moderately remunerative. At first Warren was attracted by the doctrines of Robert Owen and joined Robert Owen's followers at New Harmony, Ind. The reaction from Owen's socialism landed him in anarchy. He found a cause of the failure of New Harmony in the suppression of individuality, in the lack of initiative and of responsibility. He became convinced that individual liberty must be the foundation of true reform.

Warren tried several interesting social experiments which are well described in this book. He conducted for two years what he called a "Time Store" in Cincinnati. This store was operated on the cost system, and the purchaser paid for the amount of the seller's time he consumed in making his purchases. Each commodity was marked

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at cost price, a small percentage was added to cover expenses, and then the addition of the seller's time consumed made up the total cost to the purchaser. A time store was also started by Warren at New Harmony. "Utopia" and "Modern Times" are names of anarchist settlements in which he attempted to carry out his principles.

The corner stone of his general social philosophy was the sovereignty of the individual. The fundamental principle in his economic thought was, cost should equal price. Cost in Warren's philosophy excludes rent, interest and profits. He thought, as other socialists have, that labor is robbed by rent, interest and profit. He differed with modern socialists in the means of eliminating the private receipt of these items of income. Property is, according to Warren, a special privilege and one upheld by authority. Abolish authority, and non-privileged competition would bring it about that cost would equal price. This means that possession or "occupancy and use" should be the only condition of holding land. He also held that "under free competition, with all legal restrictions upon the issuing of money removed, interest would fall to the cost of carrying on the business of lending" (p. 113). Free competition without privilege is then the ideal of Warren.

Warren is said to have formulated his philosophy in 1827 and thus to have anticipated the economic philosophy of Proudhon, who was at that time a young man under twenty. One of Warren's early and influential followers was Stephen Pearl Andrews. Contemporary followers are Benjamin Tucker, whose periodical "Liberty" is the principal organ of this school of thought, and Victor Yarros of Chicago.

It is extremely difficult to measure the influence of a man like Warren. Mr. Bailie thinks that great literary lights of modern times, like Ibsen and Tolstoi, are proclaiming the same gospel. John Stuart Mill, in his *Autobiography*, speaks of Warren as "a remarkable American," and says that in writing his own work on "Liberty" he was influenced by Warren's writings. Mill says, among other things: "I borrowed from the Warrenites their phrase, the sovereignty of the individual" (p. 256).

Obviously a review like this is not the proper place in which to criticise theories so fundamental as those advanced by Warren. It is enough to call attention to the character of this book as a faithful biography and one which should not be overlooked by the careful student of social movements in the United States.

RICHARD T. ELY.

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Studies in Socialism. By JEAN JAURÈS. Translated with an Introduction, by MILDRED MINTURN. (New York and London: G. P. Putnam's Sons. 1906. Pp. xliii, 197.)

This work when compared with Bailie's biography of Josiah Warren, likewise reviewed in the current issue, brings before us something not always quite so tangible as one could desire, but after all something very real, viz: the difference between anarchism and socialism. It is commonly said that they are exact opposites; that anarchism desires the abolition of the State, and that socialism advocates the absorption of our entire economic life by the State. This is true in one way, and yet it is not the whole story. Both socialism and anarchism generally speaking look forward to a coöperative economic commonwealth. Even an individualist anarchist like Josiah Warren held that in its final form economic society would be coöperative. He thought that once all legal privileges were abolished, free competition would lead "to the adoption of the cost principle," and furthermore that the cost principle would "inevitably bring about coöperation and mutual aid" (*Josiah Warren*, by William Bailie, p. 106). Yet no socialist would say, as do the anarchists, that authority is *the* evil. As a result of this attitude of the anarchists we find a curious paradox, viz: that the writings of anarchists, if their peculiar views are only a little veiled, often appeal strongly to the very wealthiest classes. One of the most prominent anarchists of the day is the editor of a paper in one of our leading cities, which is more than any other paper in that city the paper of the rich. He is always nibbling away at authority, thinking that in this way he will undermine government as such. But this leads him to attack such measures as federal railway rate regulation and generally speaking measures of social control, and this is naturally well pleasing to those whom it is proposed to control. Jean Jaurès would not be likely to write editorials which would meet with applause on the part of American railway magnates. Socialists are not opposed to authority as such, although they may be opposed to the way that authority is exercised. They believe in increase in individual liberty and condemn present economic society because they say that economic forces enslave the ordinary man. Writing of Socialism and Life in chapter ii, Jaurès says that justice "has come to signify that in every man, in every individual, humanity ought to be fully respected and exalted to its complete stature. Now true humanity can only exist where there is

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independence, active exercise of the will, free and joyous adaptation of the individual to the whole" (p. 10). The anarchist would not have added those last words, "adaptation of the individual to the whole." Socialists do not believe in the abolition of government, but some of them think that as men improve its repressive features will gradually disappear, and administrative functions in the management of the coöperative commonwealth will be very nearly all that is left of government.

The significance of the present work is that it is written by one who may be truly called a great leader, one who doubtless is the equal in estimation and influence of any living socialist, a man of learning and of eloquence. He represents the extreme right wing of socialism, but he is a man of such force that even the more radical socialists are reluctantly obliged to act with him. All countries where socialism has become a force, and this means substantially the entire modern world, have the two socialist factions. There are those who wish to make progress step by step and, while not losing sight of the ultimate goal, lay for the present chief emphasis upon immediate measures, in the attainment of which they are willing to work with others. In Germany we have Bernstein in the North and G. H. von Vollmar in the South; in England we have the Fabians; in the United States we have our socialist labor party and the socialist party. It is true that neither one of these parties in this country is so conservative as those who are mentioned in the other countries; but the same two tendencies are revealed here as elsewhere. The socialists of the right wing do not believe in any fatalistic evolution bringing a grand revolution and ushering in socialism, but they are adherents of the idea of a willed evolution, a revolution to be brought about gradually by intelligent and determined effort. They do not believe in a deepening misery finally terminating in a grand collapse, but in intelligent action following upon gradual improvement. While they are willing to work with others for the attainment of immediate ends, it is a mistake to suppose that they overlook their socialist goal and are to be regarded as simply democrats in politics and economics. This is an error that has been made by many superficial observers. Even socialists of the right wing like Jaurès are working for public ownership of productive property in order that such ownership may not yield private income. Income, they hold, should be personal, and the benefits of ownership of productive property should be diffused and be absorbed in personal income. It

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is significant in this work by Jaurès that it gives us a well-written, interestingly presented statement of the most extreme conservative type of militant socialism. While Jaurès and those who think with him desire that public ownership of productive instruments should dominate our economic life, they are not fanatics in opposition to private property even in land and capital. They see that the journeyman may own his tools and the peasant may have his small farm, while at the same time our economic life is controlled by public ownership and public production. Socialists like Jaurès, moreover, do not think that socialism is to be reached by any one route, but hold that many forces working together will enable them to reach the goal that they desire. They look, therefore, to coöperation and labor unions to assist them in their work. They believe that education as well as legislation is indispensable. The general character of the present work is indicated by the two quotation which follow:

"We have, then, reached a point where it can be safely asserted that the substitute for the privileges of capital is not to be the depressing monotony of a centralized bureaucracy. No, the nation, in which is vested the sovereign social right of property, will have numberless agents—local government units, coöperative societies, and trade-unions—which will give the freest and supplest movement to social property, in harmony with the mobility and variety of individual forces. There is then a practical technical preparation for socialism just as there is an intellectual and social preparation. They are children who, carried away by the magnitude of the work already accomplished, think that all that is now necessary is a decree, a *fiat lux*, of the proletariat to make the socialist world rise up forthwith. But on the other hand they are senseless who do not see the irresistible power of evolution which condemns the unjust ascendency of the middle class and the whole class system to extinction" (pp. 21–22).

"It is, then, perfectly chimerical to hope that the revolutionary tactics of a general strike would enable even a bold, self-conscious, and active proletarian minority to quicken the march of events by force. No trick, no machinery of surprise, can free socialism from the necessity of winning over the majority of the nation by propaganda and legal methods" (p. 126).

It remains only to say that Miss Minturn has given a useful introduction setting forth the aims of socialism, and that as a translator she has done her task well. RICHARD T. ELY.

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Municipal Control of Public Utilities. By OSCAR LEWIS POND, LL.B., Ph.D. (New York: The Columbia University Press. 1906. Pp. 115.)

This monograph, which forms the first number of volume xxv of the Columbia University Studies in History, Economics, and Public Law, is devoted to a study of the general attitude of American courts toward the increasing sphere of municipal activity. The writer begins by making clear the dual capacity of the American municipal corporation, its governmental or purely public capacity on the one hand, and its semi-private functions as a purveyor of economic or commercial services on the other. The former class of functions, such as the provision of police and fire protection, are mainly mandatory powers, and may neither be abridged nor delegated. As to the manner in which a municipal corporation exercises these powers the courts have been disposed to permit entire discretion, provided always that this discretionary power is not abused to the violation of private proprietary rights.

It is, however, with the other class of municipal powers—those which the municipal corporation exercises as a business entrepreneur—that the volume is mainly concerned; and Dr. Pond has set before himself the difficult task of setting forth, in terse form, the general attitude of the courts towards the increasing commercial activity of American towns and cities so far as this attitude may be discerned from the large mass of judicial decisions. In this connection emphasis is first laid upon the very liberal spirit in which the courts have usually construed the scope of powers granted to a municipal corporation by its charter. Having regard to the public nature and purposes of a municipal corporation, powers have been drawn very freely by implication, much more readily in fact than are ordinarily obtained by implication from the charters of private corporations. These implied powers which a large number of judicial decisions have attributed to municipal corporations have usually been based upon one of three different grounds. The first invoked perhaps most commonly is that various functions may be assumed by the town or city as a part of its "police power," a general jurisdiction which many decisions have given sufficient elasticity to include not alone the protection of life, health, and property, but the right to provide for the use and convenience of citizens public services such as water and light. The supply of electricity for private use by a municipal cor-

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poration has, in at least one important case (Crawfordsville v. Braden, 130 Indiana, 149), been decided to be "a legitimate exercise of the police power for the preservation of property and health." All the decisions, it is true, do not go quite so far.

Implied power to provide services of a commercial nature are frequently found, again, in the "general welfare" clause commonly included in civic charters, this general provision being widely adopted by the courts as a basis for permitting to municipalities the most complete freedom of commercial activity not clearly inconsistent with their public character or derogatory to specific statutory regulations. And even where the extension is based neither upon an elastic interpretation of "police power" or "general welfare," resort is not uncommonly had, in the third place, to the principle that if a service is in its nature public or municipal the right of the municipal corporation to provide such service does not depend upon an express grant of powers but may be reasonably implied. This of course leaves open the very important question as to what is not a "public" enterprise; and the decision of this point becomes of vital consequence in view of the constitutional provisions which, in several States, forbid municipal borrowing except for strictly public purposes. Here. again, the courts have, as a rule, dealt very liberally with the municipalities, permitting the creation of municipal indebtedness for the establishment of rapid transit facilities, ferries, and the like. In fact, with the single important exception of a decision which denied to a municipality the privilege of engaging in the sale of coal and wood as a public enterprise, the general tenor of judicial dicta has been towards the expansion of the implied powers of municipal corporation.

The facility with which a municipal corporation may increase its commercial activities is, as Dr. Pond takes occasion to point out, affected by the attitude which the higher authorities take toward such utilities in the matter of taxation. Municipal property used for purely governmental purposes is invariably, in the absence of express statutory stipulation to the contrary, exempt from State burdens. But as regards property acquired and used by municipal corporations in their private business capacity this exemption is not so uniform. One decision, in fact, has declared the action of a State legislature in expressly relieving such property from State taxes to be clearly unconstitutional. The author suggests, however, that if the property acquired for a purpose which has been deemed suf-

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ficiently public to permit of its acquisition through municipal borrowing, it should logically be regarded as sufficiently public in its nature to be afforded exemption from taxation. In other words the incidental fact that municipal property may be used to realize a commercial profit does not necessarily, the writer thinks, infringe its purely public character or render it in any sense analogous to private property for purposes of taxation.

From the doctrine that the establishment and operation of water, gas and other like services is a function which may properly be deemed municipal, it seems to follow that all property which a municipality may acquire and hold in this connection is charged with a public trust and that the power does not inhere in the trustee municipality to dispose of such property. Only by express State authority the courts have held, may such property be alienated. Without such authority the municipal corporation seems to possess no more right to sell its gas plant than to auction off the city hall. Hence it appears that the general trend of judicial decisions has facilitated the establishment of municipal business enterprises and has, at the same time, tended to render more difficult any reversion to a policy of placing public services in private hands. Whatever may be thought of this attitude as the embodiment of an economic or political policy, the judicial decisions are wholly consistent.

Two interesting chapters are devoted by Dr. Pond to the Power to Grant Exclusive Franchises, and to the Regulation of Rates for Public Utilities. Stress is laid upon the part which the courts have played in preventing the granting of exclusive franchises by municipal corporations except in such cases as they have obtained statutory power so to do, and upon the fact that the judicial authorities will not so construe a franchise as to make it exclusive if any other reasonable construction is permitted by its express terms. Wherever the power to enfranchise accrues by implication to a municipal corporation it has been the practice of the courts to see that these implied powers are exercised within strictly reasonable limits; what these limits are, however, is a matter of fact to be determined upon its merits in each particular case. On the whole, as the writer shows, the courts have been very friendly to the principle that public authority should have the right to regulate the rates at which public services are rendered by private corporations. It does not follow however, that this right necessarily vests in the authorities of the municipality. It so vests only when such power of regulation has been accorded to

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the municipality by the State either in express terms or by necessary implication; or when, on the other hand, it has been acquired by the terms of the franchise granted to the private organization. Even when the power of regulation is to hand, moreover, it must be exercised in what the courts may deem to be, upon the circumstances of each case, a reasonable manner.

In the concluding chapter of the volume, Dr. Pond summarizes his general conclusion and adds a full list of cited cases. These conclusions bear the marks of a discriminating hand and sound judgment. The monograph is throughout a careful study of a very interesting topic, and presents in very succint and readable form all the important generalizations which one may safely venture to make within the field with which it professes to deal.

WILLIAM BENNETT MUNRO.

Commerce in War. By L. A. ATHERLEY-JONES, assisted by HUGH H. L. BELLOT. (London: Methuen & Co. 1907. Pp. xii, 654.)

According to the preface, "The purpose of this work is to provide a full exposition of the rules of international law which govern the commercial relations of the subjects of neutral and belligerent States."

The subjects of the chapters are as follows: Contraband, blockade, continuous voyage, carriage of property at sea, right of visit and search, capture and condemnation, formalities of capture, recapture and rescue.

These chapters are preceded by a lengthy table of cases in which are noticed several inconsistent abbreviations and occasional errors.

In the text the first and second chapters on contraband and blockade, respectively, are decidedly the best. These chapters cover more than two hundred and fifty of the six hundred and fifty pages of the book thus giving an extended treatment of the topics of contraband and blockade. In the chapter on contraband there is an excellent historical sketch of the development of the theory of contraband and of the inequalities in practice from early times to the present. It would probably be possible to find attempts to define contraband by treaty several centuries earlier than the treaty of 1604 between England, Spain and Burgundy which is mentioned. There seems to be no reference to the interesting English proclamation of 1626 extend-

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ing the penalty for carrying contraband to the "return in the same voyage." Many of the early tendencies traced in this first chapter have come up in new forms in later days, as shown in the present attitude toward absolute and conditional contraband, and in the recent attempts to make the neutral State responsible for carriage of contraband by its citizens. The gradual inclusion of new articles in the category of contraband as warfare developed, and the reluctance to omit any of the articles of the earlier lists, even though long since of no use in war, is well shown. The variety of practice in regard to provisions, horses, clothes, food, fuel, and ships is also set forth. The effect of the introduction of the idea of destination and of intention as related to contraband is discussed. The extension of the list of contraband is to a large extent traced to the influence of the United States. The criticism of the Russian attitude in 1904–05 does not sufficiently show the results of the discussion of the decisions of the Russian courts in the Far East and of the high admiralty court at St. Petersburg, though the comment on the British position at that time is to the point. On p. 54 there is an excellent tabular arrangement of the provisions of diplomatic documents which well covers the field between 1604 and 1898. The following excellent statement appears on p. 64, "The question of applying some precise and definite tests as to the conditions under which articles *ancipitis usus* may properly be seized by a belligerent still remains a disputed point, and thus a source of grave injury to neutral commerce and peril to international friendship. In default of any better, the ancient rule as to character of port of destination still obtains; but the supposed inefficiency of this rule to afford adequate protection to belligerents has, as we have pointed out, had two regrettable results—first, in the extension by belligerents of the category of goods absolutely contraband, as in the case of coal and cotton by Russia in her war with Japan; and secondly under the stress of circumstances, in the violation, as in the case of the *Bundesrath*, from time to time of the rule as to destination." Under such conditions it is very fitting that demand for a better definition of contraband be made.

The author seems to neglect some of the reasons for the granting to mail steamers of special privileges. The transport of belligerent persons should not at the present day be considered under the heading of contraband.

In the chapter on blockade the view of Great Britain and the United States as to what constitutes effective blockade is maintained. The

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attitude of acquiescence in blockade notified by insurgents is not warranted in theory or in practice for insurgents are not entitled to war status which is necessary for the existence blockade as provided for in the treaty of Paris of 1856. Blockade involves a state of war. Thus insurgents until recognized as belligerents may not establish a blockade in the full legal sense and pacific blockade becomes an absurdity. Speaking of pacific blockade the author says: "The danger of allowing a semblance of legality to any such halfway house between peace and war can hardly be exaggerated" (p. 109). It is hardly in accord with the fact to say that "pacific blockade of Venezuelan ports by Great Britain and Germany in 1902 met with "no remonstrances," for the United States let it be known distinctly that it did not acquiesce in the proposed plan. Toward the end of the chapter the difference between the British and American views upon some aspects of blockade is emphasized.

In the chapter on continuous voyage the author points out the dangers of this doctrine as applied by the American courts but does not sufficiently point out the necessity of preventing the practice which the courts aim to penalize. There is no doubt that condemnation of goods by *belligerents* "on suspicions, satisfactory to themselves, that their enemies are ultimately intended to have the benefit of them" would be a matter for grave apprehension. It is the "actual destination" rather than "suspicion" that is now coming to be regarded as a criterion determining the treatment of the goods. The British attitude during the South African war and some opinions of eminent English authorities since that time show a drift away from the provisions of the *Admiralty Manual of 1888*. One wishes that the chapter on continuous voyage had more of the recent drift of British practice and opinion.

The chapter on carriage of property at sea gives brief sketches of the practice of different States. The conduct of Russia is mentioned as "uniformly inconsistent" (p. 289).

In the chapter on right of search mention is made that Russia in 1877 treated "despatches and correspondence of the enemy as analogous to contraband of war." It would be well to mention also that a similar provision was included in the rules issued February 14, 1904. The conclusion is drawn in regard to the exemption of private property at sea that, "The government of Great Britain, which has most to gain by the general recognition of this principle, is, strangely enough, the most consistent opponent to its introduction" (p. 318).

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It may be said that at the present time the British opinion seems to be drifting toward the approval of the freedom of private property at sea. Only a single page is given to the topic of what constitutes a lawful commission of a vessel. This question which has recently given rise to so much controversy might without disregard of the proportions of the chapter receive more extended treatment, In considering the formalities of visit and search, the following statement is hardly in accord with the practice: "Today the general rule, as expressed by treaty, is that the visiting ship shall approach not nearer than a cannon shot, and shall send a boat with not more than two persons besides the boat's crew, which two persons shall go on board and inspect the ship's papers, of which the form is usually settled by the treaty" (p. 338). Many treaties provide that the visiting ship shall remain at a "convenient distance" or make some similar provision. A cannon shot would under modern conditions often be at too great a distance. Many treaties and some regulations prescribe that the visit shall be made by "an officer accompanied by not more than two men." The form of ship's papers can hardly be said to be "usually settled by treaty," though treaty agreements to regard the papers which are required by the laws of each State often occur. A convenient list of such papers occurs on p. 347.

In the chapter on capture and condemnation the author points out the difficulties arising from attempts to prove intention. More emphasis might have been put on the extension of the neutrality laws of the United States to conditions of insurrection. The author with good reason takes strong exception to Professor Holland's position that "in cases of greatest importance to the captor's own State" (p. 535), the captor may destroy a neutral ship before condemnation by a prize court.

One would hardly expect to find in the chapter on the formalities of capture, a section on the Status of the Russian Volunteer Fleet. In regard to the commissioning of these vessels it is properly maintained that, "The doctrine that a vessel may play fast and lose, put on and put off her public character as it suits her convenience, has no foundation in common sense or in international law" (p. 543).

The concluding chapter is a well arranged outline of the history and practice in regard to capture and recapture.

The index is inadequate and contains very few cross-references. As examples of the inadequacy, there is a reference to the case of the *Knight Commander*, but none to the *Kowsing*, there is no

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reference under "contraband" to "occasional contraband" or to "conditional contraband," but it may be found under the title *ancipitis usus*. "Dr. Truman Snow," mentioned on p. 600, is apparently intended as a reference to Dr. Freeman Snow. The statement in regard to the *United States Naval War Code of 1900* on p. 536, that it is "now withdrawn in favor of the *Naval War Code of 1904* which has not yet reached this country (England)," is not in accord with the fact. There is no *Naval Code of 1904*, nor was the *Code of 1900* withdrawn in favor of any other code. The reference to Gentilis on p. 6 is apparently a misprint and 1583 should read 1588. It seems strange to see on p. 39 the British proclamation of neutrality in an English book in the French language quoted from the *Archives Diplomatiques* and a quotation immediately below in English from the volume of the *State Papers* in which the proclamation appears in its original English form.

The method of presentation is not uniform in the different chapters. Marginal references appear in the first chapter, but not in the subsequent chapters. Black letter headings appear for the first time in the fourth chapter and are continued in the remaining chapters. Both marginal and black letter aids could be used throughout to advantage. The typographical work is excellent and it is a great pleasure to use a book of more than 650 pages which because of the quality of the paper weighs only a fraction of what an American book of similar number of pages would weigh.

As a whole, *Commerce in War* is a valuable and useful work upon maritime commerce in war. It puts in convenient and accessible form a large amount of material otherwise scattered and hard to obtain. In its field the topics, contraband, blockade, and capture and condemnation are particularly well treated. The author, Mr. Atherley-Jones and his co-laborer, Dr. Bellot, have produced an excellent book of a kind needed at the present time, a book aiming to cover fully a limited field of international law rather than to cover in a superficial manner the whole field. G. G. WILSON.

A History of Diplomacy in the International Development of Europe. By DAVID JAYNE HILL. (New York: Longmans, Green and Company. Vol. i, 1905 Pp. xxiii, 481; Vol. ii, 1907, xxvi, 664.

A History of Diplomacy in the International Development of Europe is the title appearing upon the title page of Dr. Hill's work. His

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work should be judged by this title rather than by the title appearing upon the outside of the volumes which is, *A History of European Diplomacy*. Were the outside title, *The International Development of Europe* it would be more strictly descriptive. Apparently this is Dr. Hill's idea as in the preface to his second volume he says that "The task of truthfully narrating the long story of international development is beset with peculiar difficulties." and he expresses the hope that his work will serve to "promote the cultivation of an aspect of history which is especially concerned with the progressive substitution of ideas for force in the wide field of international relations." The treatment accorded to such an event as the congress of Westphalia also shows Dr. Hill's purpose. In the thousand pages covering the period 30 B. C. to 1648 A. D. about fourteen pages are given to the long negotiations leading up to the treaty of 1648. He says: "But it is unnecessary to dwell upon negotiations so long and so complicated as to fill whole volumes, and whose details should be more leisurely followed by those to whom they are of special interest. That which chiefly concerns us here is the bearing of the congress upon the international development of Europe. Regarded from this point of view, the peace of Westphalia was the most important, and in its results the most enduring, public act of modern history, for from it dates the present political system of Europe as a group of independent sovereign States"(vol. ii, p. 599). The two volumes already issued show that the aim is as stated rather to show the bearing of diplomatic negotiations "upon the international development of Europe," than to give any account of the negotiations themselves. These "details should be more leisurely followed by those to whom they are of special interest." It may be well, therefore, to overlook the nominal title of the work and regard it as the publishers announce, as a "history of Europe from the point of view of the modern publicist" of broad training and sound judgment. Thus considered the two volumes may most advantageously be read together with the work of another great publicist, *The Holy Roman Empire* by James Bryce.

Of his plan Dr. Hill says "A history of diplomacy properly includes not only an account of the progress of international intercourse, but an exposition of the motives by which it has been inspired and the results which it has accomplished. But even this statement does not fully express the scope of such a history; for an intelligent discussion of the subject must include also a consideration of the genesis of the

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entire international system and of its progress through the successive stages of its development. Thus regarded, it becomes apparent that the whole fabric of present international relations is the result of past diplomatic activity." Dr. Hill regards it as "best to adhere closely to the main current of causality in the development of the existing system of European relations. It is, accordingly, as the title indicates, the history of diplomacy only as related to the international development of Europe as a whole, which constitutes the subject of the present work. Negotiations, treaties, and conventions that fall outside of these lines, however important they may be to the diplomatic history of particular countries, possess but little interest; but, by adhering to events of European importance, it is possible to thread the diplomatic labyrinth without confusion and to present the results of investigation within reasonable limits." Thus Dr. Hill proposes a very broad scope for his work and the first and a considerable part of the second volume partakes largely of the nature of general history.

These two volumes of Dr. Hill's work may properly be considered together. The first volume has the subtitle *The Struggle for Universal Empire* and covers the period from 30 B. C. to 1313 A. D. The second volume bears the title *The Establishment of Territorial Sovereignty* and relates to the period between 1313 and 1648. These two volumes of the series, together about 1000 pages, thus cover the period of European development from the Roman Empire to the treaty of Westphalia.

While it has been customary to regard 1648, the date of the peace of Westphalia, as the point of departure for the diplomatic history of Europe, Dr. Hill gives two volumes to a preliminary study of the foundations of modern diplomacy before that date. These cover the struggle between the Empire and the Papacy which he regards as fundamental. The remaining volumes are to consider the Age of Absolutism, the Revolutionary Era, the Constitutional Movement and Commercial Imperialism.

Dr. Hill says in the preface that "an effort has been made to render the text of use and interest to the general reader." Often the text would be more serviceable if certain documents to which reference is made were quoted in part or in full in order that contemporary opinions and views might be gained without reference to the sources not accessible to the "general reader." This lack in the first volume is less marked, though it is felt, in the second volume. Often a direct

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quotation from a source would illuminate more than pages of description as in the quotation from the letter of Louise of Savoy to the Wolsey in the dark days after the battle of Pavia, "You will recommend me strongly to the Cardinal, and say to him from me that the zeal and salutary affection which he has had for universal peace and to create between my lord and son and his master an indissoluble fraternity and friendship ought not to change on account of the fortune which has befallen us. And, if you are able, say to him, that, in case he does not wish to persevere in what he has begun, thanks to our Lord, the affairs of this kingdom are in such a state that its enemies will find its force equal to the resistance of former times, or even greater, and money to pay for it" (vol. ii, p. 376), and in the quotation from the English ambassadors in regard to the danger to Charles V. of the coming of Margaret Angoulême, "Being young and a widow."

Documents are only mentioned which would give essential ideas in regard to early diplomatic practice if reprinted, as in the statement that Cassiodorus has preserved and transmitted forms of letters of credence whose use through the Middle ages furnished the general type for subsequent times (vol. i, p. 39). One also would naturally prefer material extracts from the *Privilegium* of Otto I. (vol. i, p. 180) to a brief reference. Similarly in many instances one reading a history of this kind would gladly become more acquainted with the art of international negotiation and with somewhat of the evolution of technical procedure. It is true as Dr. Hill says in the preface to the second volume that "the essence of diplomacy does not lie in the character of its organs or its forms of procedure," but as these volumes clearly show, "the organs and forms of procedure" are often vital in avoiding international difficulties and in smoothing the path of international progress.

Dr. Hill dates the birth of international politics from the closing years of the fifteenth century. "The expedition of Charles VIII. may justly be regarded as the last great medieval adventure and the first military campaign of modern times. With equal truth, it may be taken to mark the birth of international politics."

Sometimes one is in doubt whether the proper weight is given to matters generally regarded as important as in the reference to the *Guelf* and *Ghibelline* (vol. i, p. 270) the significant contrast in the respective party constituency in northern and southern Europe would seem worthy of more emphasis, both from the historical and

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diplomatic points of view. The geography is sometimes confused as in the case of Franche-Comté (vol. ii). Some might prefer later opinions upon *jus gentium* (vol. i, p. 12) and fuller treatment of the function of maritime codes which are regarded as "the first example of international law among the nations of Europe" (vol. i, p. 362).

Nine hundred pages are covered before the heading The Genesis of International Jurisprudence confronts the reader.

Errors, however, are few for such a wide field. The merits are many when the work is regarded as a history of Europe from the point of view of the publicist. The political significance of events is judiciously set forth. Summaries show exceptional capacity and grasp of the essentials in great movements. The volumes give ample evidence of wide and careful studies. The bibliographies at the end of the chapters are well chosen. The footnotes with few exceptions are definite and illuminating. The indices are full and well proportioned and the maps are clear.

One closes these volumes with an appreciation of their value as setting forth the development of European international relations and the hope that in the subsequent volumes relating to the latter period which is now so well covered by many books upon the general development of European States, the author may devote his marked ability to the narrower diplomatic field.

The Ecclesiastical Edicts of the Theodosian Code. By WILLIAM K. BOYD, Ph.D. (New York: The Columbia University Press, The Macmillan Company, Agents. 1906. Pp. 22.)

Dr. Boyd's monograph appears in the *Studies in History, Economics and Public Law*, edited by the faculty of political science of Columbia University, New York. It was prepared as a dissertation for the degree of Doctor of Philosophy and bears the characteristic marks of the circumstances under which it was produced. But for all that, it is a well written and convenient summary of the relation of the Church to the Roman State in the fourth century as defined by the laws of the emperors. It is all the more valuable appearing, as it does, in this series of historical studies, because it is customary to neglect the study of church history except in professional schools of theology, and also because the customary treatment of church history in seminaries allows little consideration for the legal situation of the

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Church, being generally absorbed in doctrinal and antiquarian matters, and putting almost no stress upon the juridical literature as a source to be studied by the student.

The author's treatment of the *Code* is sufficient to give an intelligent understanding of the significance of the *Code of Theodosius* and its place in later jurisprudence of the empire and of the Middle Ages, but this part is of no independent value, as the information it contains is elsewhere readily accessible even in English. The author divides his principal matter under several convenient heads, viz: The Conflict between Paganism and Christianity as it Appears in the *Code*, Heresy and Ecclesiastical Institutions, the Relation of the Church to the Local Organization of the Empire, the Episcopal Courts, and the Influence of the Ecclesiastical Edicts of the *Theodosian Code* upon Early Medieval Jurisprudence. To have made his treatment of the subject complete, the author should have included the laws of domestic relations, especially marriage, which, under the direct influence of the Church, were enacted in the fourth century, and also the laws regulating the internal affairs of the Church. What Dr. Boyd has done, has been to show how the State recognized the Church as an institution not merely to be tolerated but to be made the sole authoritative and recognized religion of the empire, defended its unity by maintaining ecclesiastical orthodoxy, and strengthened the authority of the Church in the administration of justice in its courts, by the recognition and enforcement of their decisions. This, in our opinion, is a somewhat narrower task than the title would imply. But within the limits the author has set himself he has done his work faithfully.

The author has been careful to draw his information as to the tangled course of doctrinal history in the fourth century from the most approved authorities and follows the ideas for which Harnack and Loofs stand. But there seems to be a constant lack of appreciation of the situation. One has no right to expect a detailed doctrinal history of the Arian controversy, but the treatment of the disputes which fill the fourth century, by which alone as the author himself feels, the edicts on heresy are made intelligible, though, so far as it goes, is accurate and up to date, especially in recognizing the influence of the west upon the east, is still so scrappy as to be far from clear to one not thoroughly conversant with the development of Nicene theology, and it is fair to assume that the majority of those who will use this book are in that condition; and it must be said that

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the whole gives the appearance of having been compiled for the occasion. The treatment of the relation of the Church to the Empire, as of one great social force to another it was destined to supplant, labors too much under the influence of the tradition of Gibbon, to whom the Church was merely an institution within civil society. Augustine's vision of the City of God which dominated the thought of the period of transition from ancient to modern times, seems to hover before the mind of the author without being clearly seen and still less appreciated. Yet he sees clearly that the Church, on account of its ecclesiastical system, was necessarily a disintegrating force in the Empire and that its courts interfered with the administration of civil justice on the part of the State, yet did serve to transmit to the Middle Ages no small stock of legal notions.

To sum the matter up, the book appears to us to be an excellent *Vorarbeit* to a thorough-going work on the inter-action of Church and State in the fourth and fifth centuries. As such it has a value both for the author and the student of history and politics. The author doubtless would be the last to regard his work as being more than that.

J. C. AYER, JR.

The Labor Movement in Australasia: A Study in Social-Democracy. By VICTOR S. CLARK, Ph.D. (New York: Henry Holt and Company. 1906. Pp. x, 327.)

Unusual interest attaches to the labor movement in Australia and New Zealand on account of the fact that many of its features, which elsewhere are still merely subjects of discussion, are, in those countries, among the leading questions of present practical politics. Any work bearing upon this movement is, therefore, of interest to students of politics as well as to those of labor problems. Certainly this is true of the present work of Dr. Clark. The author has made no attempt to present a detailed study of the history of the labor movement in Australasia, nor to describe at length the social legislation that has there been enacted. Instead, he has sought to make his study a critical and philosophical consideration of the causes that have induced the action that has been taken, and the effect of such action upon the political and social life of the people. His work represents a minimum of description and a maximum of analysis. The result is

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an exceedingly interesting and valuable study of the political and social experiments of the Australasian people, and one that makes a thoroughly readable work.

The value of this study is much enhanced to American readers through the fact that comparisons are constantly made of the conditions and forces in the United States with those in the countries under consideration with a view to determining why, in the two countries presenting conditions in many respects so similar and peopled for the most part by persons from the same racial stock, measures of social reform have taken on such dissimilar aspects. In the one, workingmen and the masses generally have relied for the most part upon individual efforts and voluntary association; in the other, appeal has been made to the powers of the State. In the one, social and political reforms have pursued more or less independent courses; in the other, they have formed a single movement. The explanation of this, the author finds in various circumstances. In the United States, politics has had to concern itself with large questions, involving relations with foreign countries and of one class of political bodies with another; in Australasia, these questions have been fewer and simpler, with the result that political action has necessarily been restricted chiefly to matters of social and industrial organization. In the former country, again, the great diversity of physical conditions and the high development of the skilled trades have led to the growth of diverse classes of labor and the creation of facilities for workingmen, as individuals, bettering their conditions within their trades; in the latter, conditions have been more uniform and skilled labor less important, so that class, rather than individual, improvement has seemed to present the more promising method of advancement. But, most important of all, in the United States the struggle for industrial democracy did not become acute until that for political democracy had terminated; while in Australasia both have had to be striven for at the same time. "If the working people of the United States were fighting for equal suffrage, free schools, emigration restriction and liberal land laws, at the same time as for higher wages, shorter hours and generally better conditions of employment, trade union methods would appear to them as inadequate, as they do to colonial workingmen." Especially interesting is the fact, brought out by the author in this connection, that, owing to the comparatively slight development of local government in the colonies, the trade union has become to the masses in Australasia what the township and primaries have been to the people

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of the United States in furnishing the means through which their democratic aspirations have found expression. Today the industrial unions of workingmen, as organized in accordance with the provisions of the compulsory arbitration acts, are the real primary bodies through which the workingmen express their desires regarding political action and exercise a control over their representatives in the legislature.

Equally interesting to the student of politics is the fact, specially commented upon by the author, that, contrary to original intention, the boards of arbitration, from being purely judicial bodies, have in fact become essentially legislative bodies, in which are promulgated orders having all of the force of law regulating industrial conditions and relations in their most vital aspects.

It is impossible within the compass of this review even to mention the various respects in which the social legislation of Australasia presents features of interest. What has been said, however, will tend to illustrate the method of treatment of the author in his attempt to make clear the fundamental significance of the action taken. As regards the effect of this action upon the general welfare of the people, the conclusions of the author are that the results have not been so pronounced as might have been expected. As regards labor laws, properly speaking, "the evidence, therefore, does not show that the Australasian countries have received a general setback from general regulation of industries. The investment of foreign capital may have been checked by the novelty and uncertainty of this legislation, but local capital has been found to meet the demand of growing enterprises. The impression the country makes upon a visitor is not that of a land where industry is paralyzed and business stagnated, but rather the reverse." And, as regards the more strictly socialistic legislation, "an outside observer, unless a faddist on government ownership, will probably come away from Australasia with a feeling that after all this issue is less important—as affecting the social and economic welfare of the people—than those who theoretically discuss the subject suppose. Government ownership does not bankrupt the State, deaden private enterprise and kill prosperity; neither does it bring with a bump a nation into an industrial millennium."

Persons desiring a detailed description of labor conditions and legislation in Australasia should consult the two reports made by Dr. Clark to the United States Bureau of Labor: "Labor Conditions in New Zealand" and "Labor Conditions in Australia," published in

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Bulletins Nos. 49 and 56 of that Bureau, reports which the present volume admirably supplements.

W. F. WILLOUGHBY.

Citizenship and the Schools. By JEREMIAH W. JENKS. (New York: Henry Holt and Company. 1906. Pp. viii, 264.)

To bring together in a single volume essays and addresses written at long intervals on various themes, is to take large risks with literary unity. In the present instance the title is obviously an after-thought, suggesting retrospectively the general trend of the author's thinking on public questions during some fifteen years. Of the nine chapters all deal directly or indirectly with problems of education; five have to do with training for citizenship in the largest sense. There is a distinct continuity of thought in these five chapters. Professor Jenks is convinced that "not all, but a large part of our social evils come not from wickedness or hard-heartedness or injustice—though all these, too, bring evils in their train—but merely from a maladjustment of social relations." The task of social reformers, then is to effect wise readjustments. Individuals and institutions must be taught to adapt themselves to changing circumstances. This adaptation may be furthered by many agencies, but by none more than by the public school. Training for citizenship should be a matter of prime concern to all teachers from the kindergarten to the university. By training for citizenship is not meant merely formal instruction in history and civil government, but rather "the awakening of a living interest in public affairs, the arousing of a determination to see and judge political life fairly and impartially as it is, the kindling of a resolve in the student's mind to stand for the best and noblest measures in the State."

The most serious of these maladjustments, from which society now suffers, are industrial. On every hand workingmen fail to fit into industrial society as at present organized. Such failures are partly due to individual defects, but also to industrial conditions for which workingmen are not responsible. Professor Jenks believes that the public schools may render far more effective service than at present by lessening the technical inefficiency of the workingman and by giving him greater power of adaptation to his shifting environment. Manual training in some form is a valuable means to this end, not merely because it teaches greater technical skill, but also because

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it may serve to develop in the pupil the power of spontaneous self-direction and the consciousness of social responsibility.

In one instance Professor Jenks has not lived up to his doctrine of adaptation. It seems hardly worth while to reprint the article on School-Book Legislation, now fifteen years old. The appended note does not altogether compensate for the lack of revision.

ALLEN JOHNSON.

Executive Journal of Iowa, 1838-1841. By GOV. ROBT. LUCAS, edited by BENJAMIN F. SHAMBAUGH, Professor of Political Science in the State University of Iowa. (Iowa City, Iowa: The State Historical Society of Iowa. Pp. 103. 1906.)

In this book, we have a most important contribution to the sources not only of the history of one of the leading States of the Mississippi valley, but also of the history of the workings of the federal territorial system. The form in which the work is presented is so excellent as to be worthy of especial praise. In typography, paper, indexing, and binding, this volume is so admirable that it is both convenient and pleasant to use. It contains the papers and proclamations which the first governor of Iowa Territory issued during his administration, and an examination of the calendar of contents shows how varied a field his administrative duties covered. The papers deal with such diverse subjects as: the boundaries of the territory, the organization of the assembly and of county government, the formation of a territorial library, the improvement of the Mississippi river, the election of a congressional delegate, the establishment of the seat of government and the erection of public buildings for capitol and penitentiary, the sale of lands, the relations with the Sac and Fox Indians, the militia, the nomination of officers, and the veto of legislative bills. An appendix comprises a "memorandum of bills, resolutions, etc., submitted and the action taken upon them." The book is valuable for all students of political science, in that it shows how a conscientious, fair-minded man undertook the problems of territorial government in the middle of the nineteenth century. Professor Shambaugh's introduction and notes are all too brief. It is well to work out the problem of the handwriting of the journal, but a host of queries, as to persons, places, and events to which reference is made, arise, while one reads the journal, and to these the volume gives no

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answer. For example, what was the disgraceful affair in Jackson county mentioned on p. 243? Most of us know too little of Iowa history to be able to explain such difficulties and regret that the editor, from the stores of his abundant knowledge, did not give more frequent and elucidating annotation of the text.

BERNARD C. STEINER.

The Development of Freedom of the Press in Massachusetts. By C. A. DUNIWAY. (New York: Longmans. 1906. Pp. xv, 202.)

This book is one of the many valuable contributions to constitutional and legal history, which have appeared in recent years, since the men who have won the degree of doctor of philosophy have been printing the dissertations they have prepared while graduate students, and since the publication of these dissertations has been made possible by university funds. There is manifestly a small public which is interested in such books and the enthusiasm with which a scholar pursues such an investigation, using the most scrupulous accuracy of statement and making an exhaustive examination of every possible source of information, is worthy of all praise. Too often, however, the author fails to make his work interesting to persons who are not already students of the subject, and takes too little pains to appeal to the general reader. Dr. Duniway falls somewhat under this criticism. He has given an admirably complete discussion of his subject, buttressing his text with copious footnotes, giving the text of some important illustrative documents in the Appendix, and adding a splendid bibliographical apparatus. An examination of his sources shows that he has taken the trouble to search through county court records, which are too little used by students. The book is well indexed and printed in the usual excellent manner in which are all works issued from the income of the Henry Warren Torrey Fund. The horizon of the book is also wider than is the case with many dissertations, and the author has prefaced his study of the conditions in Massachusetts with a careful chapter upon the Control of the Press in England to 1603. Yet the book is one which few will read, because it is not very easy reading. It is unsafe to assume that the general reader will know much of Massachusetts history and it is well to print with modern spelling and in full all extracts from ancient documents which are quoted in the text in order that the obsolete

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abbreviations may not discourage readers. Apart from these matters there is scarcely an adverse criticism to be made on the book. A somewhat careful reading revealed no errors, save the omission of Maryland from the list of colonies in which printing was early introduced. This omission is not surprising, for it is within the last few years that the publication of the Maryland Archives has made it manifest that the Nuthead press was at work in the province shortly after 1690.

After showing that the freedom of the press is a phase of freedom of discussion, which subject also involves freedom of speech and of assembly, and tracing the English restrictions upon such freedom in the sixteenth and seventeenth century by statute, proclamation, and star chamber ordinance, Dr. Duniway takes up the discussion of the early attitude of Massachusetts toward freedom of discussion, which, by a temperate review of the cases of Roger Williams and Anne Hutchinson, he shows was an "unrecognized right." With the establishment of the first printing press in 1638, we take up the subject proper of the book. An act appointing licensers of the press was first passed in 1662, but prior to that time the colonial authorities had taken action in several cases, such as that of William Pynchon, a citizen of Springfield, who was ordered by the general court to retract the dangerous errors contained in his theological pamphlet printed in England. The general court also, as one of its measures against the Quakers, imposed a fine on anyone who imported "books concerning their devilish opinions," and even the Apostle John Eliot was condemned for using, in a book printed in England, "expressions as do too manifestly scandalize the government" of that country. From the establishing of licensing, until the loss of the first charter of the province, this "plan had worked with such admirable smoothness that no cases of disturbance of the public peace by seditious publishers are recorded for a period of twenty years." During this time, we find the establishment of the first press in Boston. An adequate sketch of the early colonial printers is given. Beginning in 1686, a period of thirty years may well be called a "lax enforcement of censorship" by the governor, for, though the censorship was abandoned in England in 1695, the instructions given to the governor of the province of Massachusetts Bay continued to contain a clause directing him to exercise this power until 1730. In 1690, the first newspaper was suppressed by the governor and council. Fourteen years later, the Boston postmaster was more successful in beginning a second one, "published

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by authority." In 1695, a Quaker, Thomas Maule, published a book and was tried for alleged libels contained in it. This first libel trial in Massachusetts began a series of judicial proceedings which showed the chief restriction on the freedom of the press after the abolition of censorship. As early as 1700, no imprimatur was required and, in 1723, James Franklin and his paper, the *New England Courant*, are brought before us in the "last instance of an attempt to revive and enforce censorship." In the next year, came the conviction of John Cheekley for libel in publishing a book, probably one he had been forbidden to print five years before, in which he upheld the Episcopalian form of church government and attacked the Congregational churches. The conditions existing during the revolutionary period, which lasted from the close of the French and Indian war to the adoption of the Federal Constitution are well described, including such topics as the suppression of writings of the opposing party by both whigs and tories, and the clauses in State and Federal Constitutions with reference to freedom of the press. The last chapter is a careful and well conceived discussion of the libel trials which occurred between 1789 and the adoption of the libel law of 1827, by which it was finally enacted, as the law of the State, that the "truth of the matter contained in the publication charged as libellous," might be given as evidence in the defense and should be a justification, provided it was further made to appear that it was "published with good motives and for justifiable ends." Up to this time, this principle had been contended for in numerous cases, such as those of Abijah Adams, Clap and Buckingham, which have been brought to light by Dr. Duniway's assiduity. With the passage of this act, the "protection of a just and liberal law" was added to exemption from censorship and immunity from arbitrary prosecution, and the press became truly free in Massachusetts.

BERNARD C. STEINER.

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NEWS AND NOTES

Foreign Affairs

PAUL S. REINSCH

By the conclusion of a convention with France on the tenth of June, and with Russia on the thirtieth of July, Japan has succeeded in giving the present situation in the Far East the appearance at least of a certain permanence and quiet. The very general character of these conventions is apparent from the text of the Russian, which closely resembles the French treaty:

> The Russian government and the Japanese government, animated by a desire to strengthen the peaceful, friendly, and neighborly relations, which happily have been re-established between Russia and Japan, and in order to avoid the possibility of future misunderstandings between the two empires, have concluded the following accord:
>
> First Article.—Each of the two contracting parties engages itself to respect the territorial integrity of the other party, as also all the rights conferred upon each of them by existing treaties, accords, or conventions concluded with China and at present in force, copies of which have been exchanged between the parties; in as far as these rights are not incompatible with the principle of equal opportunities announced in the treaty of Portsmouth, of September 5, 1905, and with all the special conventions concluded between Japan and Russia.
>
> Second Article.—The two contracting parties recognize the independence and territorial integrity of the Chinese Empire, as well as the principle of equal opportunity for all nations in the matter of commercial and industrial enterprises in that empire.
>
> They also engage themselves to maintain the status quo and to cause this principle to be respected by al pacific means at their disposal.
>
> [Signed] Iswolsky,
> Motono.

This treaty is accompanied by a Russo-Japanese fisheries convention, which was ratified on September 9, and by a treaty of commerce and navigation, published on September 11. Both of these treaties render more definite the general provisions contained in the treaty of Portsmouth, which left all details to be defined later. The treaty contains a mutual guarantee of most-favored-nation rights in addition to a grant of special privileges. Within a certain sphere, moreover, both nations

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retain the right of making special commercial arrangements (Russia within a frontier strip thirty-three miles in width, Japan with neighboring far eastern countries east of the Straits of Malacca).

The reception accorded the French treaty in Japan itself was very cordial, and almost universal satisfaction was expressed with this settlement. The arrangement with Russia, however, was not so favorably received by the opposition papers. It was reported that Japan in a secret protocol had given Russia a free hand in Mongolia. The report of the existence of any such secret understanding was immediately denied by the Japanese minister of foreign affairs.

The fact that the main conventions are so brief and composed of very general and flexible phrases has led many Oriental publicists to seek the sole significance of these treaties in the desire of the powers concerned to rest on their laurels for a number of years. In China, these treaties have made a very unfavorable impression. They are interpreted by the majority of Chinese publicists as being an attempt on the part of the powers mutually to guarantee their special privileges as over against the Chinese Empire, and thus, while making an empty declaration in favor of Chinese territoral integrity, really to advance the partition of China and to fix upon that country the system of special foreign interests and ex-territoriality from which she would so gladly free herself. Whether the understanding thus arrived at between the powers will be used for the purpose of a concerted advance of their interests in China, as is feared by the Chinese themselves, is at present perhaps the most important question in the Far East.

At the opening of the peace conference at the Hague, a delegation from Korea attempted to present its credentials, which had been issued with the consent of the emperor of that country. As by the treaties concluded during, and immediately following, the Russo-Japanese war, the entire conduct of Korean foreign affairs had been entrusted to Japan, the delegation was without international status. As a result of his indiscretion in this matter, the Emperor Yi Yung was forced to resign in favor of his son. At the same time a new treaty was concluded between Japan and Korea by which the protectorate over the latter empire is turned into a stricter suzerainty. The provisions of this latest treaty are as follows:

Article 1. The administration of Korea is subjected to the direction of the Japanese resident-general.

Article 2. Every law and decree as well as any other measure concerning important affairs of State must be submitted to the resident-general for his approval.

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Article 3. The appointment of high and responsible functionaries must likewise be submitted to his approval.

Article 4. Only candidates recommended by the resident-general are to be appointed functionaries of the Korean government.

Article 5. There is to be a strict line of demarcation between administrative and judiciary affairs.

Article 6. The employment of foreigners requires the authorization of the resident-general.

Article 7. The first clause of the convention of August 22, 1902, concerning the employment of a financial counsellor is annulled.

Though the announcement of these measures caused uprisings in various localities, the Japanese authorities did not encounter any serious difficulties, as the Korean army had been disarmed and disbanded with liberal payments. The control which the Japanese government will henceforth exercise in Korea resembles the Tunisian system rather than that of Egypt. Large numbers of Japanese officials will be employed and, though the form of the Korean government is to be preserved, in all essential respects control will be exercised by Japanese authorities.

In order to carry out the reform policies proposed for Korea by Marquis Ito the Japanese council of state has decided that Japan will grant an annual subsidy of from two to three million yen, until the Korean finances are readjusted. The program of Marquis Ito comprises measures leading to a radical reform of the Korean political and economic system in all its branches. Among the most important administrative improvements planned are the following: A reform of the judicial system, both in the character of its officials and in methods of operation; a separation of judicial and administrative functions; an entire separation of the imperial household from the executive; a reduction in the number of officials, together with an increase in salaries. The financial and monetary system of the country is to be assimilated to that of Japan; modern sanitation is to be introduced in the cities; roads and railways are to be constructed; and a system of general education inaugurated. Important public works have already been begun, and the greatly improved system of communication has added materially to land values in the interior.

The negotiations for the opening of the Tairan (Dalny) customs have been completed. The entire leased territory of Kwan Tung (the southern end of Liao-tung peninsula, where Port Arthur and Tairan are situated) is to be made a free zone. Only imported articles which are to be transported immediately through and beyond the territory will be dutiable.

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The long continued negotiations between Russia and Great Britain have finally resulted in a treaty, published on September 23, by which the relations between these two powers in Asia are adjusted. Under the terms of this agreement, the northern quarter of Persia will continue under the more special influence of Russia. For some time, Russia has been sending detachments of Cossacks to the northern provinces of Persia for the protection of Russian traders and settlers. On account of the popular agitation accompanying the establishment of the Persian parliament, local disorders have frequently arisen, which the Persian government has not always been able to cope with.

The specific provisions of the Anglo-Russian treaty are as follows:

I. CONCERNING PERSIA

Great Britain engages not to seek for herself, nor in favor of others, any concessions of a political or commercial nature in the northern third of Persia (i. e., beyond a line starting from Kasr-i-Shirin, passing through Isfahan, Yezd, Kakhk, and ending at the intersection of the Persian, Russian, and Afghan frontiers).

Great Britain will not oppose concessions in this region which are supported by the Russian government.

Russia makes a similar promise in favor of Great Britain with respect to the southeastern portion of Persia (i. e., beyond a line from the Afghan frontier to Gazik, Birjand, Kerman, and Bunder Abbas).

The arrangements by which revenues from Persian customs have been mortgaged for the payment of certain loans are not to be disturbed. Should, in the event of failure of payment, it become necessary for either power to establish a control over the sources of revenue affected, there is to be a friendly exchange of ideas concerning the organization of such control as affecting the sphere belonging to the power which does not establish such control.

II. CONCERNING AFGHANISTAN

The Russian government recognizes Afghanistan as outside the sphere of Russian influence, and it engages to conduct all its political relations with Afghanistan through the intermediary of the British government. The British government, on the other hand, engages to exercise its influence in Afghanistan only in a pacific sense; it also agrees that it will neither annex or occupy any portion of Afghanistan nor interfere in the internal administration of that country provided that the Ameer fulfills his engagements under the Treaty of Kabul, of March 21, 1905. The principal of equality of commercial opportunity in Afghanistan is established, as far as the two treaty powers are concerned.

III. CONCERNING THIBET

The two high contracting parties engage to respect the territorial integrity of Thibet and to abstain from all interference in its internal administration. They engage not to enter into negotiations with Thibet except through the intermediary of the Chinese government. Relation between British commercial agents and the

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Thibetan authorities, provided for in the Thibetan Treaty of September 7, 1904, are, however, not excluded. Neither power will send representatives to Lhassa nor seek any concessions for railways, roads, telegraphs, or mines, in Thibet.

The second peace conference at the Hague held its concluding session on October 18. The most important among the conventions worked out by the conference is that providing for the establishment of an international prize court to hear appeals from the national courts which have hitherto judged of the lawfulness of captures made in war at sea. The significance of this new institution lies in the fact that it will be a regularly constituted and permanent tribunal with compulsory jurisdiction. The work accomplished by the conference in the form of conventions and resolutions may be summarized as follows:

1. The establishment of an international prize court.
2. The recommendation of a further study of the question of limiting military burdens.
3. The principle that contractual debts of States shall not be collected by force of arms until arbitration has been resorted to.
4. The inviolability of neutral States.
5. Further definition of the rights and duties of neutrals in time of war.
6. The requirement of a declaration of war before hostilities are begun.
7. The prohibition of the bombardment of unfortified ports and towns.
8. Certain restrictions upon the placing of floating mines.
9. Application of the Red Cross Convention of 1864, and its revision of 1906, to maritime warfare.
10. The transformation of merchantmen into warships.

Before adjourning, the conference officially recognized the good services of the president of the United States in taking the first steps toward its convocation.

The assassination of General Alikhanoff at Alexandropol ended a career of singularly romantic interest and of typical importance in connection with the advance of Russia into Central Asia. Ali Khan Avarski was a Mohammedan born at Baku in 1846. He served in the Russian army from the ranks up, and took part in the various Turcoman campaigns. The conquest of Merv was due to his initiative and he became the first Russian governor of that province. The rise of an Oriental to the position of major-general in the Russian army has been pointed to as a proof of the liberality and the assimilating ability of Russia. In his methods of government and military control this general remained thoroughly Oriental. His attempts to suppress insurrection in Georgia and the Caucasus were so mercilessly severe, especially as against the Armenians, that he incurred fierce popular hatred, to which he ultimately fell a victim.

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The intervention of France and Spain in Morocco as the mandataries of the Algeciras treaty-powers has so far not led to any international complications. The general, and it is claimed unnecessary, destruction of the property of Europeans at Casablanca in consequence of the bombardment has caused indignant protests on the part of German merchants. The German government has, however, so far exhibited a very quiet attitude. The proposal of France, contained in a joint note to the signatory powers, for the provisional formation of a French and Spanish police corps in the Moroccan ports was accepted by the German government upon the presumption that it would not be given such a form as to prejudice the provisions of the Algeciras act. The French cabinet council, following the precedent of the bombardment of Alexandria, has decided that the Moroccan government will be held financially responsible for the damage sustained in the pillage and other disturbances at Casablanca. The indemnities due are to be fixed by an international commission.

The diplomatic sky of Europe was unusually serene during the summer of 1907. With the exception of the troubles in Morocco and the possible consequences of an American-Japanese misunderstanding, no cloud could be discovered. Such a temper was of course an eminently fitting accompaniment to the peace conference at the Hague. The desire for an adjustment of international relations, which manifested itself in the conclusion of the treaties beteen France, Japan, Russia, and Great Britain, was also expressed by an unusual number of meetings of sovereigns and ministers of State for the purpose of a friendly interchange of opinions and civilities. King Edward VII. met the emperor of Germany at Wilhelmshohe and the emperor of Austro-Hungary at Ischl; he also had an interview with M. Clemenceau, the president of the French council of ministers, at Marienbad. M. Jules Cambon met Prince Buelow at Norderney. The Austrian and the Italian ministers of foreign affairs had a meeting at Desio on the Semmering, upon which occasion various matters concerning the Balkan States were discussed. Another very important meeting took place at Swinemünde between Czar Nicholas, accompanied by his minister of foreign affairs, M. Iswolsky, and Emperor William, accompanied by Prince Buelow. The sovereigns remained together for four days and had many long conversations, at which their ministers also were frequently present. There evidently exists a desire for a better mutual understanding and for a guarantee of peaceful relations through the adjustment of prob-

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lems in outlying regions and through the recognition of a certain European solidarity of interest.

At a meeting of the ministers of the Central American republics represented in Washington, on September 18, a protocol was signed providing for a general conference to be held at Washington in November for the adjustment of the mutual relations of the Central American republics.

The agitation against further Asiatic immigration into British Columbia has assumed serious proportions. Local riots have taken place, Asiatics have been threatened and attacked, and a Japanese school set on fire by local rowdies. The agitation is directed against all Asiatics, Japanese, Chinese, and Hindoos, and thus affects the British government in several capacities; in its duty to the Hindoos as their protecting sovereign, and in its international responsibilities to friendly powers like Japan and China, the former of whom stands in a relation of special alliance with Great Britain. The Canadian government is attempting to secure from the government of Japan a modification of the clause in the treaty of 1906 which permits a subject of either country to enter and freely reside in the territory of the other. As this treaty accords very substantial trade advantages to Canada, which are especially favorable to British Columbia on account of its situation, the Dominion government hopes that the provincial authorities may be induced to make special efforts to secure the treaty rights of Japanese residents.

At the opening of the Transvaal parliament on June 20, the premier, General Botha, announced that the government had decided not to re-enact the labor ordinance, but to repatriate all Chinese laborers immediately upon the expiration of their contracts. The premier asserted that it would be easy to secure an adequate supply of native laborers for the mines. The latter are to be recruited under the supervision of the governmental native labor bureau.

The German secretary of state for colonies, Dr. Dernburg, has taken steps towards the founding of a colonial academy at Hamburg, a city which is specially adapted to be the seat of such an institution. Hamburg already has an institute of tropical medicine, which is to be incorporated with the new colonial academy.

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Personal and Bibliographical

J. W. GARNER

The committee on program of the fourth annual meeting of the American Political Science Association, which will be held at Madison, Wis., during the last week of December, announce that the sessions will be devoted to papers and discussions upon the following subjects: Friday evening, December 27 (joint session with the American Historical Association), Presidential Addresses; Saturday forenoon, December 28, The Relations of the United States to the Latin American Republics; Saturday afternoon, The Newer Institutional Forms of Democracy; Monday forenoon, December 30 (joint session with the National Municipal League), Police Administration in the United States; Monday afternoon, business session report of the committee on the teaching of American government in secondary schools; Section Meeting on Comparative Legislation. Subject: The Methods of Work in Legislative Reference Bureaus; Monday evening, The Administration of Punitive Justice and its Reform; Tuesday forenoon, December 31 (joint session, with the American Economic Association), The Public Utilities Acts of New York and Wisconsin: The Section on Colonies and Dependencies will meet Tuesday forenoon.

Prof. C. E. Merriam of the University of Chicago spent the summer in England and Scotland, studying British municipal conditions.

Prof. John A. Fairlie has been elected a delegate to the forthcoming constitutional convention of Michigan. Professor Fairlie expects to bring out at an early date a volume of essays on municipal government to be published by the Macmillan Company.

Dr. Robert H. Whitten, for the last seven years sociology librarian of the New York State Library, has been appointed secretary of the public utilities commission for the city of New York. Mr. Frederick D. Bramhall, of the University of Chicago, has been appointed as Dr. Whitten's successor.

Dr. C. D. Tenney has been appointed lecturer on Chinese history and institutions at Harvard University for the present year.

Dr Jesse S. Reeves, formerly a member of the Indiana bar, has been appointed assistant professor of political science in Dartmouth College. Mr. Reeves received his doctor's degree at Johns Hopkins University in 1894 and recently held the Albert Shaw lectureship in that University. He is the author of *The International Beginnings of the Congo Free*

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State and of *The Napoleonic Exiles in America.* Dr. Frank A. Updyke (Brown, 1905) has also been added to the Dartmouth faculty with the title of assistant professor of political science. He is the author of a monograph, entitled *The Treaty of Ghent and the International Negotiations Relative to the War of 1812.*

Prof. T. S. Woolsey of Yale University is spending his sabbatical year abroad. His work in international law is being taken by Prof. Chas. C. Hyde of Northwestern University. Prof. Edward V. Raynolds has returned to Yale from his sabbatical year abroad and has resumed his classes in comparative law.

New additions to the faculty of the University of Pennsylvania are Murray W. Gross, assistant in political sicence, and Henry R. Mussey, assistant professor of sociology.

Mr. Gromer, instructor in history in the University of Missouri, has been appointed treasurer of Porto Rico to succeed Mr. W. F. Willoughby, who has been promoted to the secretaryship of the island.

Prof. F. J. Goodnow of Columbia University is spending his sabbatical year in a tour around the world. His work is being given during his absence by Dr. Thomas Reed Powell.

Dr. Chas. A. Beard has been appointed adjunct professor of political science at Columbia on the Blumenthal foundation. His graduate work was done at Oxford and Columbia. He is the author of *The Office of Justice of the Peace in England* and *An Introduction to the English Historians.*

The Carpentier lectures on The Science of Law at Columbia University for 1907–1908 will be given by Prof. John C. Gray of Harvard University.

Prof. J. W. Jenks will deliver a course of lectures at Columbia University this fall, on The Principles of Politics from the Viewpoint of an American Citizen. The lectures are given on the Blumenthal foundation.

Dr. William H. Allen, for some years past the general agent for the New York Society for Improving the Condition of the Poor, has been appointed director of the newly created bureau of municipal research in New York City. Mr. Robert Bruére has been chosen as his successor.

Dr. J. L. Barnard of Philadelphia has published a detailed study of the history and workings of factory legislation in Pennsylvania. (J. C. Winston Company, Phila.)

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The first two volumes of Alleyne Ireland's monumental series on oriental colonization have appeared from the press. These volumes deal with the administration of British Burma.

G. W. Prothero, D.Litt., LL.H., editor of the *Quarterly Review* and sometime professor of history in the University of Edinburgh, has accepted the invitation of Harvard College to deliver a course of lectures on The Constitutional History of England from the Great Charter to the Fifteenth Century during the second half of the current academic year.

The National Municipal League has announced that the William H. Baldwin Prize for the coming year will be awarded for the best essay written by an undergraduate student in an American college or university on The Relation of the Municipality to the Street Railway Service. Further information may be had from Prof. L. S. Rowe, chairman of the League's committee on the administration of the prize.

A second examination of candidates for the consular service was recently held at Washington. Of the fifty-four candidates who were designated, thirty-eight presented themselves for examination and thirteen passed.

Governor Guild of Massachusetts, under authority of a resolution of the General Court, has appointed a commission of five persons to investigate the subject of old age insurance and pensions, with a view to establishing such a system in that State.

At a recent meeting of prominent citizens held in Albany, N. Y., plans were adopted for the formation of a State legislative league to obtain publicity in regard to all proposed measures before the State legislature.

The election of delegates to the forthcoming constitutional convention in Michigan was held on September 17. There are ninety-six members altogether, a majority of whom are lawyers, including some of the leading members of the profession. The most important questions to come before the convention relate to restrictions upon special legislation, home rule for cities, taxation, and the initiative and referendum. The convention meets October 22, and will probably be in session until the latter part of January. The new constitution will be submitted to the voters in April.

The next meeting of the National Municipal League will be held at Providence, November 19–22, in conjunction with the American Civic Association. In addition to the annual address of President Bonaparte,

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the review of municipal progress by Secretary Woodruff and the reports of the various committees. there will be about fifteen addresses on different phases of municipal and State taxation by specialists in this field; among whom may be mentioned Profs. Seligman, Plehn, Merriam and Wilcox, Frederic C. Howe, Hon. F. N. Judson, Chas. E. Sprague, Geo. F. Seward and H. T. Newcomb. An address on National Parties in Local Elections will be delivered by Mayor Brand Whitlock of Toledo, and a discussion of electoral reform will be participated in by a number of speakers, including Thos. Raeburn White, Robt. Treat Paine, Wm. M. Ivins, Philip Loring Allen, Walter L. Fisher, J. Hampton Moore and others. The commission plan of government will be discussed by Prof. W. B. Munro, S. B. Allen, Admiral Chadwick and others. On Thursday evening there will be a dinner at which addresses will be delivered by Presidents Bonaparte and McFarland, Governors Guild and Higgins, President Faunce and Secretary Woodruff. On Thursday and Friday mornings there will be joint sessions of both associations at which addresses will be made by a number of distinguished speakers.

Henry Holt and Company have conferred a service upon students of early social and political institutions by reprinting, in comparatively inexpensive form, Lewis H. Morgan's *Ancient Society*. The original edition of 1877 is followed without change or addition.

A New York State library bulletin, entitled *Legislative Reference Lists, 1906*, contains brief bibliographies on life insurance, direct nominations, and the inheritance tax.

A select list of books on the French alliance with the United States, prepared by Mr. A. P. C. Griffin, has recently been published by the Library of Congress.

Mr. Courtney S. Kenny's *Outlines of the Criminal Law* has been revised and adapted for American scholars by James H. Webb (Macmillan). For the general reader and layman it possesses particular merits and to this class the new edition is mainly addressed.

The International Bureau of the American Republics at Washington, D. C., has issued two valuable volumes entitled *American Constitutions: A Compilation of the Political Constitutions of the Independent Nations of the New World*. These constitutions are given in both the original texts and English translations. In volume one are given the instruments of government of the federal unions, and of the republics of Central America. Volume two contains the constitutions of the republics of the Caribbean Sea, and of South America. A third volume is promised

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which, besides the general index, will contain the articles of confederation and perpetual union, the Constitution of the great Colombia—a confederation which by its dissolution gave rise to the republics of Venezuela, New Granada and Ecuador—the Constitution of the United Provinces of Central America (*Las Provincias unidas de Centro América*), a confederation which was created in 1824, and other documents illustrating the development of political life in the nations of the New World. The editor is José Ignacio Rodiquez, chief translator and librarian of the Bureau.

The American Economic Association will soon begin the publication of a periodical which will be devoted almost entirely to reviews of books and other publications upon economic and sociological topics. These reviews will include summaries of important magazine articles on subjects of an economic or sociological character, whether they appear in periodicals devoted mainly to such subjects or in periodicals only occasionally and incidentally treating them. This new periodical will be known as the *Economic Bulletin*, and will appear quarterly. It will contain from 80 to 100 pages and will be the first American attempt to provide a complete current critical bibliography of economics. The managing editor will be Prof. C. W. A. Veditz of the George Washington University.

The International Labor Office has begun the publication of an English edition of its *Bulletin*, which it has published in French and German editions since 1902. This *Bulletin* gives a complete survey of the progress of labor and social legislation in all countries of the world. The *Bulletin* contains either the full text or adequate summaries, not only of laws, but also of administrative orders concerning the regulation of hours of work, conditions of labor, accidents, insurance, and other matters affecting the working classes. It traces the progress of labor legislation by giving an account of the preliminary enquiries and debates in legislative bodies, the resolutions of public meetings, and a general review of the progress of opinion in different countries. It also supplies a bibliography of labor legislation and labor statistics. The 1907 volume—the first of the English edition—includes in the year's review, the texts of the trade disputes act and the workmen's compensation act, and an account of legislative and administrative action in different countries in relation to unemployment. It further contains a review of the labor laws of the United States as they were in the year 1904, and a translation of all the notes on international labor treaties which have

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appeared in back numbers of the French and German editions. The *Bulletin* is published by the Newspaper Printing and Publishing Company, Ltd., Woolwich, England. The annual subscription is eight shillings.

Messrs G. P. Putnam's Sons announce *Law: Its Origin, Growth and Function*, by the late James C. Carter of the New York bar. The volume is to consist of a series of lectures prepared for delivery before the law school of Harvard University but never delivered, owing to the death of the author. The lectures do not constitute a technical treatise upon any branch of the law but rather a comprehensive study of its origin and development as a science and its influence and function in the civilization of mankind.

The Prisoner at the Bar (Scribners) by Arthur Train, an assistant prosecuting attorney in New York City, is the title of a book which throws much light on the actual administration of the criminal law. In a series of entertaining chapters, most of which are enlivened with amusing anecdotes, he portrays the workings of the courts as he has seen them in New York City. Some of the subjects with which he deals are the judge, the jury, the witness, the verdict, the law's delays, and the "tricks of the trade." Mr. Train's observations go to show what is now generally admitted on all hands that our judicial procedure is in many respects archaic and that the American people as a whole lack respect for law.

The Boston Book Company announces the early publication of a collection of essays on constitutional law by the late James B. Thayer; also a new work on constitutional law by Mr. F. J. Stimson. The latter is to be a comparative study of the Constitutions of the United States and of the individual States thus forming a treatise on American constitutional law as a whole.

Mr. Soule, president of the Boston Book Company, who has for a number of years made annual trips to England for the purpose of purchasing books on the common law for his house, this year, on account of the increasing interest in foreign law, extended his trip to the continent for the purpose of adding to his stock a collection of continental codes, treatises and miscellaneous works on the civil law.

Among recent publications in the Columbia University Studies are *The Finances of Cleveland*, by Chas. C. Williamson, Ph.D.; *Trade and Currency in Early Oregon*, by Jas. H. Gilbert, Ph.D.; *The Tobacco Industry in the United States* by Meyer Jacobstein, Ph.D.; *Social Democracy*

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and Population by Alvan A. Tenny, Ph.D.; *The United States Steel Corporation* by Abraham Berglund, Ph.D.; *The Taxation of Corporations in Massachusetts* by Harry G. Friedman, A.B.; and *De Witt Clinton and the Origin of the Spoils System in New York,* by Howard Lee McBain, Ph.D.

The State in Constitutional and International Law, by Robert Treat Crane, is the title of a recent number of the Johns Hopkins University Studies. Dr. Crane attempts to reconcile the apparently conflicting theories of divisible and indivisible sovereignty by distinguishing between the State as a concept of constitutional law and the State as a concept of international law and by restricting the applicability of the two theories to separate and distinct spheres. The study is marked by originality of thought and discriminating judgment.

Among the new publications of Longmans, Green and Company is a *History of Commerce,* by Prof. Clive Day of Yale University, and an *Economic History of the United States,* by Prof. Ernest L. Bogart of Princeton University. Professor Day's work is divided into five parts dealing successively with the history of commerce in ancient, medieval, modern, and recent times and with the commerce of the United States. Professor Bogart's history traces the growth of agriculture, commerce, transportation and labor from their colonial beginnings to the complex industrial and commercial society of today. Suggestive topics and bibliographies accompany each chapter and there is a general bibliography at the end of the volume.

Prof. Cephas D. Allin, of Queen's College, Ontario, is the author of a new work entitled *The Early Federation Movement in Australia* (British Whig Publishing Company, Kingston, Ontario, 1907), being a review of the federal movement among the Australian States during the first twenty years of its history. Mr. Allin confines his study mainly to the parliamentary aspects of the struggle rather than to the history of the movement as a popular contest. The early movement was embodied in the policy of Lord Grey, secretary of state for the colonies, and in the activities of a few leading members of the Australian legislatures. It is this stage of the movement which constitutes the subject of Mr. Allin's treatise and to which he devotes more than four hundred pages.

A study in Belgian criminology which has attracted considerable attention is *La Belgique criminelle* (Lecoffre, Paris), by Henri Joly, a member of the French Institute. The study was undertaken under the auspices of the academy of moral and political sciences of Paris and embodies the results of extensive investigation of the criminal records

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of Belgium. The author finds that Belgium like most other countries has been afflicted with an increase of crime which he attributes mainly to the increased consumption of intoxicating liquors.

A valuable work which appeared almost contemporaneously with the assembling of the second Hague conference is Herr von Otfried Nippold's *Die Fortbildung des Verfahrens in völkerrechtlichen Streitigkeiten* (Duncker and Humblot, Leipzig) an elaborate study of the nature and development of arbitral procedure in the settlement of international controversies.

Prof. Paul Laband's *Deutsches Staatsrecht* has been reissued as the initial volume of Jellinek, Laband and Piloty's proposed monumental work entitled *Das öffentliche Recht der Gegenwart* which has been planned along the lines of Marquardsen's well known *Handbuch* and which, it is announced, will be completed within about six years. J. C. B. Mohr of Tübingen is the publisher.

A new and revised edition of Sir Courtenay Ilbert's *The Government of India* (Clarendon Press) first published in 1898 has recently appeared. In addition to the digest of the laws relating to the government of India there is an historical introduction and a discussion of the applicability of English law to the native States and of the legal relation of the British government to the government of the native States. The new edition was made necessary by the changes introduced into the government of India by the recent orders in council relative to the jurisdiction of the governor-general over the native States.

A new English translation of Prince Kropotkin's *Conquest of Bread* (Putnam's) contains a good exposition of his principles of anarchy.

Prof. William G. Sumner of Yale University has written a stout volume of nearly 700 pages on the subject of *Folkways* (Ginn, 1907), which he describes as a study of the sociological importance of usages, manners, customs, and morals. In the first two chapters he attempts to show that the folkways are habits of the individual and customs of the society which arise from efforts to satisfy needs. In succeeding chapters he deals with the struggle for existence, labor, wealth, societal selection, slavery, cannibalism, sex morals, the marriage institution, the social codes, kinship, educational history, and various other subjects. The work bears evidence of wide reading and extended research.

Licensing and Temperance in Sweden, Norway and Denmark, by Edwin A. Pratt (Dutton), is mainly an exposition of the Gothenburg and Copenhagen systems of controlling the liquor traffic. The book also gives a

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somewhat detailed account of the actual working out of the systems in their respective countries based upon extended personal observation of the author. He condemns rather severely the Gothenburg method but thinks the Copenhagen system worthy of serious consideration.

The Lodging House Problem in Boston, by Albert Benedict Wolfe, Ph.D. (Houghton, Mifflin and Company), is the title of one of the recent issues of the Harvard Historical Series.

A new edition of Reinhard Frank's *Commentary on the German Imperial Criminal Code,* including the introductory law (*Einführungsgesetz*), is announced by J. C. B. Mohr.

The July number of the *Archiv für Sozial Wissenschaft and Sozial Politik* contains the first instalment of what promises to be a valuable study of the Austro-Hungarian Ausgleich by Friedrich Gaertner. The same number contains an interesting article on the German social democracy in international alliances by Robt. Michels.

The last number of the *Zeitschrift für die gesammte Staatswissenschaft* contains an elaborate contribution on the subject of parliamentary freedom of speech and protection against its abuses, by Dr. F. W. R. Zimmerman.

The first volume of a work, entitled *Le droit constitutionnel de la Belgique,* by O. Orbran, has recently been published by Giard et Brière.

Students of the American law of citizenship will be interested in an article published in the August number of the *Revue de droit international et de législation comparée* by Ernest Lehr, entitled Nationalité et de la naturalization d'après la législation actuelle des États d' Amérique. M. Lehr comments on the new citizenship law and explains the changes which it has introduced into American practice.

It is announced that the German colonial office has launched a project for the establishment of regular prescribed courses of instruction on the German colonies in the public schools with a view to arousing a more general popular interest in Germany's colonial possessions.

The French government has arranged for the publication of the documents relating to the diplomatic history of the Franco-German War of 1870–71. The committee on publication, consists of MM. Aulard, Bourgeois, Reinach, Farges and Mandel.

A project of a model code of international public law in 786 articles to be adopted by a proposed international conference representing all nations

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and embodied in a convention to be accepted by all States participating in the conference has been outlined by E. Duplessis in a work entitled *La loi des nations, projet d'institution d'une autorité internationale législative, administrative et judiciaire, et d'un code de droit international public* (Paris, librairie Laroze). The work has been crowned with a prize given by the International Peace Bureau.

Le monde et la guerre russo japonaise, by André Chéradame (Plon Nourrit et Cie, Paris), is the title of another contribution to the literature of the Russo-Japanese war. The work is divided into two parts: Part I is mainly a history of the war based largely on personal observation; Part II deals with the results of the war on the political and economic situation in Asia, Europe and the United States.

Dr. Heinrich Sievering of the University of Marburg has been called to the University of Zürich as professor of political science to succeed Prof. Herkner.

Dr. Otto Lenel, professor of Roman and German law in the University of Strasburg, has been called to a similar chair in the University of Freiburg. Professor Lenel's chair at Strasburg has been filled by the appointment of Dr. Otto Gradenwitz, professor of Roman and German civil law in the University of Königsberg.

Dr. Rudolph Leonhard, professor of Roman law, civil procedure and Prussian constitutional law in the University of Breslau, has been appointed Kaiser Wilhelm professor of law and political science in Columbia University for the year 1907–1908. Professor Leonhard delivered his inaugural lecture at Columbia on September 27, his subject being The Historical Development of Law.

Dr. Gustav Rümelin, professor of Roman and civil law in the University of Freiburg died June 12, at the age of fifty-nine years. He was the author of various works on political and legal subjects one of which was several years ago translated into English under the title *Politics and the Moral Law.*

Dr. Conrad Bornhak, professor of constitutional law and Prussian administrative law in the University of Berlin, has recently added another volume to his already long list of standard works. The new volume is entitled *Grundriss des deutschen Staatsrechts* (Böhne, Leipzig, 1907), and treats (1) of the constitutional law of the individual States, (2) of imperial constitutional law, and (3) of constitutional law in general.

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Yves Guyot, the well known French scholar and publicist, is the author of a new work entiled *La démocratie individualiste* (Paris, Giard et Brière). He maintains that the trend of human development is in the direction of individualism rather than toward socialism and defends his position with both courage and ability. His new work is a brilliant presentation of the individualistic doctrines though it is not without evidence of partisanship.

The conditions in Morocco which led to the recent intervention, the calling of the conference at Algeciras, the proceedings and acts of the conference and, in general, the diplomatic history of the Moroccan "crisis," have been made the subject of a work by André Tardieu entitled *La conférence d'Algésiras* (Félix Alcan, Paris).

A new, enlarged and revised edition of M. Andreani's *La condition des étrangers en France et la législation sur la nationalité* has recently appeared from the house of Alcan (Paris).

M. Réné Worms, the editor of the *Revue internationale de sociologie,* and one of the most prolific and erudite of living writers on sociological questions, has lately published the third volume of his studies on the philosophy of the social sciences, under the title *Conclusions des sciences sociales.* The two preceding volumes deal with the objects and methods of the social sciences (Giard et Brière, Paris).

The international status of railroads in belligerent territory, including the rights and obligations of belligerents in relation to railways in time of war, is the subject of a study entitled *Die Eisenbahnen im Kriege,* by Karl Nowacki, a Polish engineer and doctor of law (Frank, Zürich).

The first volume of a treatise on private international law has lately been published by P. D. Sakellarios of Athens. The author is Georges Streit, a professor in the University of Athens, a member of the Hague permanent court of arbitration and a scholar with a European reputation.

Another study in private international law is a monograph entitled *De la nationalité en Roumanie* by André J. Suciu, a member of the law faculty of the University of Paris. It is the initial volume in a series of similar studies which are expected to form a history of the law and juridical institutions of Roumania (Bonvalot-Jouve, Paris).

The second part of Professor Mérignhac's *Traité de droit public international,* consisting of a volume of over eight hundred pages has lately appeared as one of the volumes in the Librairie général de droit

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et de jurisprudence (Paris). The first part, dealing with general theories, appeared in 1905. The present volume is devoted to the law of peace and is to be followed by several additional volumes.

The services of Lord Milner to the British empire from 1897 to 1902 and his political career in South Africa form the subject of a somewhat laudatory work by W. Basil Worsford, entitled *Lord Milner's Work in South Africa* (Dutton).

A work which should prove of interest to students of colonial government is MM. Chas. de Lannoy and Herman Van der Linden's *Histoire de l'expansion colonial des peuples européens* (Paris, Alcan). The present volume is devoted to Spain and Portugal to the end of the nineteenth century and deals not only with the history of colonial expansion but with colonial enterprises, methods of administration, the economic régimé and the resulting effects, political and economic, upon the mother country. Various other volumes devoted to particular countries will be added to the series and when completed it will form an elaborate history of European colonial expansion from ancient times to the present day. Each volume is to be accompanied by a valuable bibliography.

Les questions actuelles de politiques étrangères en Europe (Paris, Alcan), is the title of a collection of addresses dealing with live questions of foreign politics in Europe, delivered at the Sorbonne, during the past year under the auspices of the École des sciences politiques. Great Britain, France, Germany, Russia, and the Balkan States are each handled by a specialist. There is an introduction by M. Ribot and a general discussion of the problems of foreign politics which confront Europe today, by M. Anatole Leroy-Beaulieu, director of the school.

A new and timely contribution to the literature of international law and diplomacy is *La nouvelle convention de Genève du 6 juillet, 1906* (Paris, Pedone, 1907), by Joseph Delpech, the well known jurisconsult and professor of public law in the University of Aix-Marseille. The work is not only a commentary on the new Geneva convention but is a study of the evolution of international usage and legislation for the amelioration of the sick and wounded in war, and is completed by an analysis of the necessary restrictions which the nature of war imposes upon the Red Cross Service.

M. Emile Stocquart, a Belgian advocate, has undertaken the task of writing a comprehensive treatise on the evolution of marriage considered from the juristic point of view. Two volumes have already

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appeared. The first deals with marriage in France; the second, which has just appeared, is devoted to the law of marriage in Spain. The title of the work is *Aperçu de l'evolution juridique du mariage.*

A new treatise on the history and development of the Constitution of Württemberg has been written by Karl Gösz under the title *Die Verfassungsurkunde für das Königreich Württemberg* (J. C. B. Mohr, Tübingen).

The first volume (1906) of the *Zeitschrift für Völkerrecht und Bundesstaatsrecht* (Kern's Verlag, Breslau), edited by Josef Kohler with the collaboration of a group of distinguished scholars representing various countries has set a high standard. It is a volume of 638 pages filled with signed articles by eminent scholars and publicists like Le Fur, Meili, Oppenheim, Huber, Mueller, Adler and others; with texts of judicial decisions, treaties, documents, etc.; miscellaneous news; literary and bibliographical notes; book reviews; chronicles of events of a national and international character, etc.

Das parlamentarische Interpellationsrecht, by Dr. Hans Ludwig Rosegger, is the title of the latest number of the *Staats- und völkerrechtliche Abhandlungen,* edited by Professors Jellinek and Anschütz of Heidelberg (Duncker and Humblot, Leipzig). For purposes of treatment the study is divided into two parts. Part one is an exposition of the nature and purpose of the interpellation, its legal character, the forms which it assumes, the subjects to which it applies and the kindred forms of procedure to which it may be likened. Part two is devoted to a review of the history and actual workings of the interpellation in the imperial and Prussian parliaments, in the Austrian and Hungarian chambers, in the French Chambers of Deputies and in the English House of Commons. The monograph is one of the best in this well known series, being the first systematic study of the kind dealing with a parliamentary practice which has gained rapidly in the last few years, but which has been largely neglected by political writers.

The eighth volume of Pradier-Fodéré's monumental work, entitled *Traité de droit international public européen et americain,* has appeared from the press (Pedone, Paris). The untimely death of M. Pradier-Fodéré in June, 1904, prevented the completion of his great task, but happily the present volume was sufficiently advanced for publication at the time of the author's death. It is devoted to the relations of States in time of war, especially maritime war.

Recent doctors' dissertations of interest to students of political science are: *Der Wohnsitz in bürgerlichen Recht,* by M. Bergheim,

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Rostock; *Gesetzzustimmung und Bewilligung in Königreiche sachsen,* by M. Forwerg, Leipzig; *Die Finanzpolitik der preussischen Gross-städte,* by W. Klose, Halle; *Das Oberaufsichtsrecht des Staates in modernen deutschen Staatsrecht,* by W. Schoenborn, Heidelberg; *Rechtsempire und Rechtstheorie,* by W. Habrucker, Halle: *Der Staatsangehörigkeit der juristischen Personen,* by E. Isay, Bonn; *Die Verantwortlichkeit des Reichskanzlers* by H. Schuster, Erlangen; *Das Erfordernis der ministeriellen Gegenziechnung nach dem Staatsrecht preussens und die deutschen Reichs,* by W. von Loen, Breslau; *Die Gegenzeichnung und die Verantwortlichkeit des Reichskanzlers auf rechts vergleichender Grundlage,* by H. Reichard, Frankfort; and *Die Stellvertretung des Reichskanzlers,* by K. Reumpelt, Breslau.

A new, revised and enlarged edition of Mischler and Ulbrich's *Oesterreichisches Staatswörterbuch* has recently appeared from the press of Hölder (Wien, 1907).

Prof. Frederic de Martens is the author of a brochure, entitled *Par la justice vers la paix* (Lavauzelle, Paris), being mainly a commentary on the decision of the Hague permanent court of arbitration relative to the right of Great Britain, Germany, and Italy to preferential treatment in the settlement of claims against Venezuela in 1904. Professor Martens was a member of the tribunal which rendered the award and is therefore well qualified to interpret its decision. His brochure also contains an exposition of the so-called Drago doctrine.

Les sentences arbitrales en droit international privé, by Louis Weill, a French advocate and doctor of law (Larose and Tenin, Paris) is a three hundred page treatise on the nature of arbitral awards, the enforcement of arbitration conventions, the difficulties in the way of the arbitral method of settling controversies of an international character and similar questions. The value of the work is increased by a full bibliography. A still more elaborate work on the same subject was published by M. Lainé in 1899.

De la déclaration de guerre, by M. Maurel, with an introduction by Professor Mérignhac of the University of Toulouse (Librairie générale de droit et de jurisprudence, Paris), is a work which was crowned by a gold medal given by the law faculty of the University of Toulouse. The author discusses at length the question of the necessity of a declaration before beginning hostilities, the forms of declaration and the effects. He concludes that the declaration cannot justly be dispensed

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with and maintains that it should announce clearly and unequivocally the intention to have recourse to armed force. He, of course, reproaches the Japanese for their conduct at Port Arthur.

A traveling fellowship carrying a stipend of 4000 marks has been awarded by the University of Berlin to Edward Heymann, a German referendar. The appointee is required to take up the study of the administration of the criminal law in foreign states and make a report thereon. The fund was provided by the later Professor Berner whose recent death was recorded in a recent number of this REVIEW and who in his later life took a deep interest in the movement for the reform of German criminal law.

Two recent monographs dealing with the procedure of amending the constitution, particularly of the German Empire, are Dr. Georg Jellinek's *Verfassungsänderung und Verfassungswandlung* (Haring, Berlin), and Wilhelm Weise's *Verfassungsänderungen nach Reichsrecht* (Marcus, Breslau). Both authors distinguish between conscious alteration of the formal text through deliberate legal methods or revolution and changes which modify the meaning of the constitution without altering formally the text. Jellinek maintains that changes of the latter character may come from interpretation by the parliament, by the administration and by the courts as well as through political necessity and non-exercise of constitutional powers. Weise seems to admit the possibility of change through the operation of custom (*Gewohnheitsrecht*).

A new German publication of especial interest to students of political science has been announced to issue its first number in October, the *Archiv für Rechts- und Wirthschaftsphilosophie*. It is to be edited by Prof. Josef Kohler of the University of Berlin, with the assistance of Dr. Fritz Berolzheimer of Munich.

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[1] The references to periodical articles are kindly furnished by Dr. Horace E. Flack.

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